

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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Th7c

Appeal filed: 4/3/2000
 Hearing opened: 5/11/2000
 49th day (waived): 5/22/2000
 Substantial Issue found: 8/9/2000
 Staff: D.Carl
 Staff report prepared: 11/27/2000
 Hearing date: 12/14/2000
 Hearing item number: Th7c

APPEAL STAFF REPORT DE NOVO HEARING

Appeal number.....A-3-SCO-00-033, Hinman-Skees Residence

Applicants.....Brian Hinman & Suzanne Skees

Appellants.....Commissioners Sara Wan and Christina Desser
 Citizens For Responsible North Coast Planning
 Friends of the North Coast
 Sierra Club

Local governmentSanta Cruz County

Local decision.....Approved with conditions (March 14, 2000)

Project location.....Approximately ¾ of a mile inland of State Highway One at the Santa Cruz/San Mateo County border inland from Año Nuevo State Reserve, North Santa Cruz County (APN 054-061-16).

Project descriptionConstruct an approximately 15,000 square foot, 3-story, 51 feet high residential dwelling with associated terraced grounds and hardscape, detached accessory structure, swimming pool, and 1,000 linear foot driveway, with over 5,500 cubic yards of grading for the building site, courtyard, driveway and access road.

File documentsSanta Cruz County Certified Local Coastal Program (LCP); Santa Cruz County Coastal Development Permit Application File 98-0426.

Staff recommendationApproval with Conditions

Synopsis of the staff recommendation: The Applicant's proposed project raises concerns regarding protection of environmentally sensitive habitat area (ESHA), visual resources, and agriculture along the largely undeveloped stretch of wilderness coastline stretching from the City of Santa Cruz north to Half Moon Bay. The subject property is entirely occupied by either habitat for the endangered San Francisco garter snake and the threatened California red-legged frog, or native Monterey pine forest deemed ESHA by the LCP. Staff is recommending approval of a modified project, smaller in size and scale, that minimizes adverse ESHA impacts, that keeps development out of the public viewshed, and that protects and enhances endangered species habitat on the subject property.



California Coastal Commission
December 2000 Meeting in San Francisco

Staff: D.Carl Approved by:
 A-3-SCO-00-033 (Hinman-Skees SFD) stfrrpt DeNovo.doc

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1. Project Procedural History

The proposed project (hereafter “the Project”) in front of the Commission was approved by a 3-2 vote of the Santa Cruz County Board of Supervisors on March 14, 2000. This Board approval was separately appealed to the Coastal Commission by Commissioners Sara Wan and Christina Desser; Citizens For Responsible North Coast Planning; Friends of the North Coast; and the Sierra Club. On May 11, 2000, the Coastal Commission opened the substantial issue hearing, and continued the hearing until such time as a full staff report analysis of the Project would be possible. On August 9, 2000 in Huntington Beach, the Commission resumed the substantial issue hearing on the Project and found that the appeals raised substantial issues in terms of the Project's consistency with the Santa Cruz County LCP. As a result, the Commission took jurisdiction over the coastal development permit (CDP) for the Project.

In finding substantial issue, the Commission directed the Applicant to develop additional information regarding the habitats present on the subject site before the Project was brought back for a de novo analysis and review. The Applicant has since prepared additional biotic information for the site and Commission staff, including the Commission's Senior Biologist, together with United States Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) staff have visited the site and reviewed the relevant information prepared. This staff report incorporates the information and analysis up to and including the substantial issue hearing, as well as the additional de novo process since August in Huntington Beach.

Additional information developed by the Applicant since the County acted on the CDP used in the preparation of this staff report includes: (1) a forester's report (by Stephen Staub and Stephen McGuirk,



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dated May 2000) analyzing the forest resources in the immediate vicinity for their habitat and screening values (see Exhibit K); (2) a cumulative impact analysis describing the proposed project in relation to possible future development in the surrounding area (dated received May 15, 2000) (see Exhibit L); (3) a composite analysis of site constraints (dated received September 12, 2000) (see Exhibit P); and (4) a San Francisco Garter Snake and red-legged frog Habitat Assessment (by Dr. Sam McGinnis, dated October 15, 2000 and updated November 2, 2000) (see Exhibit D).

2. Staff Report Summary

The Project approved previously by Santa Cruz County, and the subject of this appeal, is a proposed large residential dwelling compound situated on an agriculturally-zoned property inland of State Highway One and Año Nuevo State Reserve at the Santa Cruz/San Mateo County border. This stretch of mostly undeveloped Central Coast represents the grandeur of a bygone (in many places) agrarian wilderness California and is a critical public viewshed for which the LCP dictates maximum protection.

The project site presents a challenging planning conundrum for residential siting in that the roughly 50 acre parcel is zoned for high priority agriculture, is located in a critical public viewshed, and is completely occupied by ESHA. ESHA on the site includes native Monterey pine forest, wetland, native grassland, and habitat and migration corridors for both San Francisco garter snake (a Federal and State Endangered Species) and California red-legged frog (a Federal Threatened Species and a State Species of Special Concern). USFWS indicates that the area in and around Año Nuevo State Reserve, including the Applicant's site, is home to the most important San Francisco garter snake habitat in existence today. The habitat area on the Applicant's site should be understood as part of a larger habitat area in and around the Año Nuevo area connected by migratory corridors. The relatively steeper portions of the site are further constrained by areas of geologic instability.

In light of the significant resource constraints and associated habitat values, the best use for the subject property is probably as an open space habitat area managed to preserve environmentally sensitive habitat areas. However, if a residence must be entertained at this location in light of constitutional takings considerations, its siting and design are critical to the continuation of the habitat and other resource values at this location. Although agriculture is a high priority under the LCP (and the Coastal Act), avoidance and preservation of ESHA at this site, at the expense of agriculture, is more protective of coastal resources given both the absence of ongoing agriculture and the significant endangered species habitat present on the site as well as the site habitat's relation to the larger endangered species habitat of the greater Año Nuevo area.

Staff has identified three potential areas for siting a residence at this location to have the least impact to ESHA: (1) the area at the northwest corner of the property; (2) the area at the southwest corner of the property nearest the existing adjacent residence; and (3) the forested area proposed by the Applicant. After consultation with USFWS and CDFG, Staff believes that if a residence must be considered in deference to constitutional rights of private property owners, the best location to pursue residential development on the subject site is within the forested site area proposed by the Applicant. All things



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considered, this area would have the least impact on habitat for the Federal and State listed frog and snake species. Although the site is located within the native pine forest also deemed ESHA by the LCP, placing a residence here will limit residential activities associated with the house to an area that is not frog or snake habitat. These two listed species taking precedence over native pine forest that is not (currently) so listed. The residence would not require any native pine removal as it would be tucked within a forest clearing at the edge of the larger pine-forested area inland. As such, its impact on the native Año Nuevo Monterey pine stand could be minimized.

Even with the forest site location, though, the proposed residence at this location would result in a host of adverse impacts that must be addressed, including the loss of forest habitat ESHA for the house placement, the loss of garter snake and frog habitat because of the driveway placement, the potential for increased mortality to frogs and snakes from increased use of the existing road and new use of the driveway, the potential for disturbance to frogs and snakes from typical residential activities on the site, impacts to sensitive species during construction, and development within the public viewshed.

To address these impacts, Staff recommends approval with conditions that will: minimize site disturbance to that allowed by the LCP in the native forest (i.e., ¼ acre); lower the height of the proposed residence to ensure that it is not visible within the existing public viewshed; require additional dense tree planting to ensure that the residence is not visible in the event the existing eucalyptus screen is removed in the future; place the remainder of the site area (outside of the residence itself) under a permanent conservation easement; enhance garter snake and frog habitat within the conservation easement area; protect sensitive species during construction; and require roads that will least disrupt the threatened and endangered snake and frog species.

3. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-SCO-00-033 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of the Santa Cruz County Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because



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either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the development on the environment.

4. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the plans submitted to the Commission (titled *Año Nuevo House* by Kirk E. Petersen and Associates Architects last dated revised December 28, 1999; dated received in the Commission's Central Coast District Office January 14, 2000) but shall show the following changes to the project:
 - (a) **Residential Compound Footprint.** The footprint of the residential compound (i.e., the residence, all impermeable pathways, courtyards, garages, swimming pools, retaining walls, lawn and ornamental landscape areas, etc.) shall be confined within an area of no greater than ¼ acre (i.e., 10,890 square feet).



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- (b) **Terrace Areas.** There shall be no ornamentally landscaped terrace areas surrounding the residential compound footprint. All areas surrounding the residential compound footprint shall be contoured to mimic the natural topography and revegetated with native grasses appropriate to the Año Nuevo region.
- (c) **Other Grading/and Septic Line Area.** All graded areas, including but not limited to the septic line area, shall be contoured to mimic the natural topography and revegetated with native grasses appropriate to the Año Nuevo region.
- (d) **Structural Height.** The height of the residential structure shall be reduced to the extent necessary to ensure that the residence will not be visible from any public viewing location(s) within Año Nuevo State Reserve and/or from Highway One; the height reduction shall not be less than 10 feet at a minimum. The Revised Project Plans shall be submitted with evidence (e.g., photo simulations, representative staking, architectural renderings, etc.) that the reduced-height structure will not be visible from any public viewing location(s) within Año Nuevo State Reserve and/or from Highway One.
- (e) **Building Materials.** All exterior treatment shall be wood in shades of green and brown designed to match the mottled forest backdrop at this location. The roof shall be mottled copper substantially consistent with the 3 foot by 7 foot roof sample supplied to the Commission.
- (f) **Lighting.** There shall be no exterior night lighting, other than the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting shall be directed away from environmentally sensitive habitat areas. All interior lighting within the residence shall be directed away from windows which are visible from environmentally sensitive habitat areas. All lighting shall be downward directed and designed so that it does not produce any light or glares off-site.
- (g) **Road Improvements (General).** The existing access road shall not be paved. Any road improvements shall be located within the existing roadway prism (i.e., no roadbed expansion is allowed). Any road improvements shall incorporate adequate measures to capture, direct, and treat road runoff to avoid sediment and pollutant loading.
- (h) **Road Improvements (Near Pond).** The existing access road area at the pond shall be replaced with a bridge of adequate span to provide for sensitive habitat connectivity (i.e., San Francisco garter snake and California red-legged frog migration between the pond and the riparian corridor to the southwest) and flood protection (see also Exhibit G-1). The pond area roadbed fill shall be replaced with an engineered system designed to manage pond hydrology in favor of San Francisco garter snake and California red-legged frog habitat. The area of removed roadbed fill and surrounding disturbed areas shall be restored within the parameters of the Habitat Enhancement Plan (Special Condition 3). The bridge and adjacent roadway areas shall incorporate adequate measures to capture, direct, and treat road runoff to avoid sediment and pollutant loading. The bridge shall be constructed before construction of the driveway and/or residential compound can commence.



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- (i) **Driveway.** The driveway from the existing access road to the residence shall be placed as far away from the Applicant's pond as possible using the existing informal jeep trail adjacent to the southern property line to avoid the main pond habitat area as much as is feasible. The driveway shall not be paved. The driveway shall be minimized in length and width, and in no case shall the driveway be wider than 12 feet. All remaining jeep trail areas shall be scarified and revegetated with native grasses appropriate to the Año Nuevo region.
- (j) **Tree Screen.** The 1,200 linear foot Monterey cypress row along the western property line shall be planted as an uneven stand (a minimum of two rows, 120 individual trees) using a mix of 15 gallon and 48 inch box container size specimens for the first row nearest the existing road, and a mix of 5 gallon and 15 gallon container size specimens for the second row furthest from the existing road (to the east of the first row of trees). The Monterey cypress row shall be planted as close to the existing road as possible while not threatening tree viability. The 22 replacement trees in the general vicinity of the residence (a mix of Monterey cypress, Coast live oak, and coast redwood) shall be 48 inch box container size specimens.
- (k) **Site Runoff.** All site runoff shall be captured and filtered to remove typical runoff pollutants. Runoff from all surfaces subject to vehicular traffic shall be filtered through an engineered filtration system specifically designed to remove vehicular contaminants. All filtered runoff that is suitable for groundwater recharge, irrigation, and/or pond restoration purposes shall be directed to groundwater basins, irrigation systems, and/or ponds in such a manner as to avoid erosion and/or sedimentation.
- (l) **Defensible Space.** The Residential Compound Footprint shall be configured to allow for a California Department of Forestry "defensible space" that does not require removal of any living Monterey pine. The defensible space and all vegetation proposed within the defensible space shall be clearly identified on the plans. The plans shall also identify all parameters for maintaining the defensible space, including but not limited to: identification of what types of vegetation must be removed; what types of vegetation can remain; and the specific parameters for any tree limb removal (e.g., when such limbs shall be removed, at what limb height is removal unnecessary, etc.).

The Revised Project Plans shall be submitted with evidence of review and approval (or evidence that none is necessary) from the appropriate official(s) from: (1) Santa Cruz County; (2) United States Fish and Wildlife Service; (3) California Department of Fish and Game; and (4) California Department of Forestry.

The Permittee shall undertake development in accordance with the approved Revised Project Plans. Any proposed changes to the approved Revised Project Plans shall be reported to the Executive Director. No changes to the approved Revised Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the



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Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, provide for the following:

- (a) **Biological Monitor.** A qualified biological monitor experienced with, at a minimum, San Francisco garter snake and California red-legged frog shall be present at the site during all construction activities. The biological monitor shall have the authority to halt all construction activities, and/or modify construction methods, as necessary to protect habitat and individual sensitive species. The biological monitor shall complete daily monitoring reports that indicate the date and time of work, weather conditions, the monitoring biologist's name, project activity/progress, and any listed species observed. These reports shall be compiled and submitted to the Executive Director upon completion of construction as part of a construction monitoring report.
- (b) **Bridge Construction First.** The bridge to be installed along the existing road nearest the pond shall be constructed and operational before construction of the driveway and/or residential compound can commence.
- (c) **Construction Zone.** The perimeter of the area subject to construction activity shall be minimized to that absolutely necessary to construct the bridge, the driveway, and the residence, and shall be delineated by construction fencing adequate to repel San Francisco garter snake and California red-legged frog. All construction methods (including staging and stockpiling areas) expected to be used during construction shall be identified. To the extent feasible, previously disturbed off-site areas shall be used for storage and staging of equipment and materials.
- (d) **Construction Timing.** No construction shall be allowed when San Francisco garter snake and/or California red-legged frog are expected to be present. At a minimum, all construction shall be limited to the dry season (i.e., from April 15th to October 15th) of the year. Construction shall not commence until the area within the construction zone has been field surveyed for the presence of San Francisco garter snake and California red-legged frog by a qualified biologist experienced with these two species; any specimens found during the field survey shall be relocated to protected areas outside of the construction zone. If the field survey is conducted before July 1st, a second survey shall be required to again check for the presence, and relocate to safety any individuals found, of San Francisco garter snake and California red-legged frog by a qualified biologist experienced with these two species
- (e) **Work Schedule.** Timing for all activities (e.g., 8am to 5pm work day; 12 hours a day; 24 hours a day; Monday through Friday; just weekends; every day; etc. and indications if there is any flexibility in each activity) shall be identified.
- (f) **Erosion Control Procedures.** The Construction Plan shall clearly identify all best management practices to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the



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onsite wetland/riparian system and/or ultimately into the Pacific Ocean. Silt fences, or equivalent apparatus, shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, restricting grading and earthmoving during the rainy weather.

The Erosion Control Procedures shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day.

All Construction Plan requirements shall be shown as notes on the job copy of the Approved Revised Project Plans.

The Construction Plan shall be submitted with evidence of review and approval (or evidence that none is necessary) from the appropriate official(s) from: (1) Santa Cruz County; (2) United States Fish and Wildlife Service; (3) California Department of Fish and Game; and (4) California Department of Forestry.

The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 3. Habitat Enhancement and Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Habitat Enhancement and Management Plan (Plan) to the Executive Director for review and approval. The Plan shall be prepared under direction of qualified biologists experienced in the fields of: San Francisco garter snake and California red-legged frog habitat; native Monterey pine forest habitat; wetland biology and hydrology; and native grasslands. The Plan shall be developed in consultation with the California Department of Fish and Game and United States Fish and Wildlife Service.

The Plan shall provide for habitat enhancement of the entire property excluding the Residential Compound Footprint (specified in Special Condition 1) and shall be designed primarily to enhance



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and manage habitat for San Francisco garter snake, California red-legged frog, and native Monterey pine forest. The Plan shall include a pond restoration component and a bridge/riparian area restoration component. The Plan shall at a minimum include:

- (a) A detailed site plan of the entire property on a topographic base map with distinct habitat areas identified;
- (b) A baseline ecological assessment of each habitat area, including but not limited to, assessment of the biological and physical criteria for the area;
- (c) The goals, objectives, performance standards, and success criteria for the property, including specific coverage and health standards for any areas to be planted. At a minimum, explicit performance standards for vegetation, hydrology, sedimentation, water quality, and wildlife, and a clear schedule and procedure for determining whether they are met shall be provided. Any such performance standards shall include identification of minimum goals for each herbaceous species, by percentage of total plantings and by percentage of total cover when defined success criteria are met; and specification of the number of years active maintenance and monitoring will continue once success criteria are met. All performance standards shall state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. Sustainability of the attributes shall be part of every performance standard. Each performance standard shall identify: (1) the attribute to be achieved; (2) the condition or level that defines success; and (3) the period over which success must be sustained. The performance standards must be specific enough to provide for the assessment of habitat performance over time through the measurement of habitat attributes and functions including, but not limited to, wildlife abundance, vegetation abundance and type, and hydrology.
- (d) The final design, installation, and management methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards;
- (e) Provisions for the full restoration of any impacts that are identified as temporarily necessary to install the restoration or enhancement elements;
- (f) Provisions for submittal, within 30 days of completion of initial (and subsequent phases, if any) restoration work, of “as built” plans demonstrating that the restoration and enhancement has been established in accordance with the approved design and installation methods;
- (g) Provisions for a detailed monitoring program to include at a minimum provisions for assessing the initial biological and ecological status of the site. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation;
- (h) Provisions to ensure that the site will be promptly remediated if monitoring results indicate that the site does not meet the goals, objectives, and performance standards identified in the approved mitigation program and provisions for such remediation. If the final report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance



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standards, the Property Owner shall submit a revised or supplemental mitigation program to compensate for those portions of the original program which did not meet the approved performance standards. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

- (i) Provisions for submission of annual reports of monitoring results to the Executive Director for the first five years after all enhancement and maintenance activities have concluded (including but not limited to watering and weeding, unless weeding is part of an ongoing long-term maintenance plan) and periodic monitoring after that time, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the project in relation to the performance standards.
- (j) Provisions for ongoing management of the habitat enhancement area to ensure the long-term maintenance of the goals, objectives, performance standards, and success criteria of the Plan.

The Plan shall be submitted with evidence of review and approval (or evidence that none is necessary) from the appropriate official(s) from the United States Fish and Wildlife Service and the California Department of Fish and Game.

The Permittee shall undertake enhancement activities in accordance with the approved Plan. It is the responsibility of the Permittee to implement all enhancement and restoration measures specified in the Plan. Any proposed changes to the approved Plan shall be reported to the Executive Director. No changes to the approved Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 4. Habitat Conservation Easement.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director a Habitat Conservation Easement (Easement) for the purpose of habitat conservation. Such Easement shall cover all areas of the property with the exception of the Residential Compound Footprint (specified in Special Condition 1). The recorded document shall include legal descriptions and site plans of both the Permittee’s entire parcel and the Easement area. The recorded document shall indicate that no development, as defined in Section 30106 of the Coastal Act or Section 13.10.700-D of the certified Santa Cruz County Local Coastal Program, shall occur in the Easement area except for habitat enhancement and restoration activities specified in the Approved Habitat Enhancement Plan for the site, and minor road maintenance activities within the existing roadway prism.

The offer to dedicate the Habitat Conservation Easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of



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recording.

5. Habitat, Scenic, and Rural North Coast Character Protection.

- (a) No development, as defined in Section 30106 of the Coastal Act or Section 13.10.700-D of the certified Santa Cruz County Local Coastal Program, shall occur in the Habitat Conservation Easement (Special Condition 4 of Coastal Development Permit Number A-3-SCO-00-033) area except for habitat enhancement and restoration activities specified in the Approved Habitat Enhancement and Management Plan (Special Condition 3 of Coastal Development Permit Number A-3-SCO-00-033) for the site, and minor road maintenance activities within the existing roadway prism.
- (b) Helicopter use, including but not limited to landing or parking of helicopters on the property, associated with any development authorized by Coastal Development Permit A-3-SCO-00-033 is prohibited, except for emergency purposes.
- (c) No trees of any size that are located between the Residential Compound Footprint (identified through Special Condition 1 of Coastal Development Permit Number A-3-SCO-00-033) and Highway One shall be removed from the subject property unless the Coastal Commission has determined that said tree(s) present a significant hazard to life, health, or property. Any such tree(s) removed, and/or any trees located between the Residential Compound Footprint and Highway One that die and fall over of their own accord, shall be replaced with a tree of the same species in the same general vicinity as the previous tree.
- (d) The subject property includes a portion of the native Año Nuevo Monterey pine forest within which development and utilization of a prescribed burning program, or other means to mimic the effects of natural fires, is allowed and may be pursued.
- (e) If any portion of any residential structure(s) located within the Residential Compound Footprint identified through Special Condition 1 of Coastal Development Permit Number A-3-SCO-00-033 becomes visible in the future from any public viewing location(s) within Año Nuevo State Reserve and/or from Highway One, the visible portion(s) shall either be: (1) screened with vegetation; or (2) if vegetation is shown to be inadequate to completely screen the structure, the visible portion(s) shall be removed. In either case, the property owner shall immediately submit a remediation plan to the Executive Director of the Coastal Commission specifying the range of measures to be undertaken to screen and/or remove any such newly visible portion of the structure(s) from within the Año Nuevo State Reserve/Highway One public viewshed. Implementation of any such remediation plan shall not occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

By acceptance of this permit, the Permittee acknowledges and agrees to 5a through 5e above.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director incorporating



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all of the above terms of this condition for the purpose of protecting habitat, scenic, and rural north coast character values. The Habitat, Scenic, and Rural North Coast Character Deed Restriction (Deed Restriction) shall affect the entire parcel (Deed Restricted Area) and shall include a legal description and site plan of: the Permittee's entire parcel; the Deed Restricted Area; the Residential Compound Footprint (specified in Special Condition 1); and the Habitat Conservation Easement area required by Special Condition 4. The Deed Restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The Deed Restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

- 6. Agricultural Hold Harmless and Indemnity Agreement.** By acceptance of this permit, the Permittee acknowledges and agrees: (a) that the site is adjacent to land utilized for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittee and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural properties against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are related to the normal and necessary agricultural land use and its impact to users of the property.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition and all required notification requirements of current Santa Cruz County Code Section 16.50.090 (Agricultural Land Preservation and Protection, Public Notification Requirements; see Exhibit F). The deed restriction shall include a legal description of the Permittee's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

- 7. Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval evidence of all permits, permissions or approvals granted, or evidence that no permits, permissions or approvals are necessary, from: (1) United States Fish and Wildlife Service; (2) California Department of Fish and Game; and (3) California Department of Forestry. The Permittee shall inform the Executive Director of any changes to the project required by the any of the above-listed agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is necessary.



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- 8. Santa Cruz County Conditions.** All previous conditions of approval imposed on the project by the Santa Cruz County pursuant to an authority other than the California Coastal Act remain in effect (Santa Cruz County Application Number 98-0426; see Exhibit C). To the extent such Santa Cruz County conditions conflict with the Coastal Commission's conditions for Coastal Development Permit Number A-3-SCO-00-033, such conflicts shall be resolved in favor of the conditions for Coastal Development Permit Number A-3-SCO-00-033.

Recommended Findings and Declarations

The Commission finds and declares as follows:

5. Project Description

A. Project Location

The proposed project is located in the coastal foothills on property approximately ½ mile inland of State Highway 1 near the Santa Cruz – San Mateo County border. The main portion of Año Nuevo State Reserve lies seaward and southwest of the site across Highway 1. The Reserve is a protected dune and beach area and a well-known attraction for coastal visitors; approximately 240,000 day-users annually visit the Reserve for docent-guided tours of the spectacular wild coastline and the elephant seals who make this area home. This area is part of the stretch of largely undeveloped coastal lands located between Half Moon Bay to the north and Santa Cruz City to the south. The Monterey Bay National Marine Sanctuary, the largest of twelve such federally protected sanctuaries nationwide, is directly offshore.

The undeveloped project site itself is approximately 50 acres in size and is designated for agriculture in the LUP and zoned CA (Commercial Agriculture) in the County Code. This site was originally part of the larger Steele Ranch that at one time encompassed roughly 7,000 acres dedicated primarily to dairy operations. The properties were subdivided in the 1950s creating the subject parcel and its neighboring properties. Existing single family residences are present on both the CA-zoned parcel immediately to the north (Pfluke) and the CA-zoned parcel immediately to the south (Boling). The heavily forested and steep site to the east is undeveloped and zoned TP (Timber Production). The property due west (between the subject site and Highway 1) is an 84 acre site for which the Commission is currently considering an appeal of a proposed single family dwelling (A-2-SMC-99-066, David Lee). The border between Santa Cruz and San Mateo County is coterminous with the western parcel line of the subject parcel.

The site slopes roughly from east to west with the highest elevations located at the northeast corner of the property where scattered Monterey pine, oak, madrone, and fir trees predominate. This tree canopy extends almost exclusively along the eastern property line of the site and is the outlying edge of a larger forested area extending along the steep arroyo of Año Nuevo Creek located east and north of the subject site. The proposed house-site lies roughly half way along the eastern property line within the scattered tree canopy there, about ¾ of a mile from Highway One. The majority of the parcel slopes more gently to



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the southwest portion of the property to a pond and riparian habitat area adjacent to the existing roadway providing access to the residence to the south. This pond area drains through culverts into a larger riparian arroyo steeply sloping towards Highway 1 approximately ½ mile to the southwest. The majority of the parcel is gently sloped mixed grassland, predominantly non-native with some intermixed native grasses and coyote brush scrub (see ESHA findings for more detail on site ecology). The land on the subject site has been fallow for some time.

See Exhibit H for general project location and site environs, and Exhibit Q for selected site photos.

B. Description of Proposed Project

The Applicant proposes to construct a 3 story, 51 foot tall, 15 room single-family dwelling, with a basement, 3-car connected garage (with a room above), swimming pool and assorted pathways, courtyards, and retaining walls. All told, approximately 15,000 gross square feet of interior residential space would be developed, and the overall residential compound (house, garage, pool, paths, and surrounding ornamentally landscaped grounds) would occupy roughly an acre. Another acre or so would be devoted to a driveway, septic system, and fill slopes below the residence and associated ornamental terrace areas. The proposed development would be in a Gothic Revival architectural style utilizing wood frame construction, steeply pitched metal roofs, tall narrow cross gables, multiple mullion windows, and board and batten siding. The roof would be constructed of mottled copper best described as a dark forest green hue, while the body of the structure would be a mix of muted brown and green colors. The residence is modeled after the historic Rose Hill Plantation located in South Carolina.

The Applicant also proposes to pave the existing approximately 15 foot wide unpaved access road serving the existing adjacent residences and to develop California Department of Forestry-required turnouts (12 by 40 feet) at several locations. A new 12 to 14 foot wide driveway would also be graded and paved, extending approximately 1,000 feet (and approximately 150 feet in elevation) from the existing access road to the proposed home site. An estimated 5,560 cubic yards of balanced cut and fill grading would be required to accommodate the house and road improvements.

See Exhibit I for proposed site plans and elevations.

C. County Approval

The County approved the proposed project with multiple conditions designed to address the issues highlighted by the appeal, including requirements for: house colors in muted green and brown to blend with the surrounding landscape; low-reflective glazing in all upper gable windows; planting of 16 Douglas fir and/or Coast redwood trees (5 or more 48 inch box trees, 5 or more 15 gallon size, and 5 at 5 gallon size) located between the house and the line of sight of Año Nuevo State Reserve;¹ planting of a 1,200 foot row of Monterey cypress along the access road;² erosion control and tree protection BMPs

¹ Note that the Applicant proposes to plant 22 trees (8 each redwood and oak, and 6 cypress) according to proposed plans.

² Note: identified as part of the proposed project on the project plans.



during construction; deed restrictions acknowledging adjacent agriculture and timber production lands, and requiring retention of on-site trees; prohibition on road widening adjacent to the pond-riparian area.

6. Coastal Development Permit Determination

The standard of review for this CDP determination is the Santa Cruz County LCP.

A. Visual and North Coast Character Resources

1. Applicable Policies

The County's LCP is extremely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. This is particularly true as it pertains to maintaining the rugged character of the rural north Santa Cruz coast. The LCP states:

LUP Policy 5.10.10 Designation of Scenic Roads. *The following roads and highways are valued for their vistas. The public vistas from these roads shall be afforded the highest level of protection. State Highways: Route 1 – from San Mateo County to Monterey County...*

LUP Policy 5.10.2 Development Within Visual Resource Areas. *Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views, agricultural fields, wooded forests, open meadows, and mountain hillside views. Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....*

LUP Policy 5.10.3 Protection of Public Vistas. *Protect significant public vistas as described in policy 5.10.2 from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. Provide necessary landscaping to screen development which is unavoidably sited within these vistas.*

LUP Policy 5.10.5 Preserving Agricultural Vistas. *Continue to preserve the aesthetic value of agricultural vistas. Encourage development to be consistent with the agricultural character of the community. Structures appurtenant to agricultural uses on agriculturally designated parcels shall be considered to be compatible with the agricultural character of surrounding areas.*

LUP Policy 5.10.11 Development Visible From Rural Scenic Roads. *In the viewsheds of rural scenic roads, require new discretionary development, including development envelopes in proposed land divisions, to be sited out of public view, obscured by natural landforms and/or existing vegetation. Where proposed structures on existing lots are unavoidably visible from scenic roads, identify those visual qualities worthy of protection (See policy 5.10.2) and require*



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the siting, architectural design and landscaping to mitigate the impacts on those visual qualities. (See policy 5.14.10.)

LUP Policy 5.5.2 Least Disturbed Watershed Designations. *Designate the following watershed areas as Least Disturbed Watersheds: ... Green Oaks Creek, Año Nuevo Creek, ...*

LUP Policy 5.5.10 Retaining Undeveloped Lands in Watersheds. *Encourage property owners in designated watershed areas to sign Open Space Easement contracts or pursue other mechanisms to retain undeveloped lands within Water Supply Watersheds.*

IP Section 13.10.325. Large Dwelling Permit Requirements and Design Guidelines. *[see Exhibit O for text of 13.10.325]*

IP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility. *The following Design Criteria shall apply to projects sited anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.*

IP Section 13.20.130(c)(2) Rural Scenic Resources, Site Planning. *The following Design Criteria shall apply to projects located in designated scenic resource areas: Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, maintaining the natural features (streams, major drainage, mature trees, dominant vegetative communities). Screening and landscaping suitable to the site shall be used to soften the visual impact of development in the viewshed.*

2. County-Approved Project

The visual analysis required by the County indicates that the project would not be visible from Highway 1, and that it would be partially visible from the public viewshed at Año Nuevo Reserve. When built, its visibility would be somewhat tempered because the proposed project would be nestled into the hills and the outlying tree canopy on the subject site, approximately 2 miles from the portion of the Año Nuevo dune area where its visibility would be greatest, and mostly hidden by the intervening topography and vegetation from public views. The County did not analyze views from portions of the Reserve north of the main elephant seal tour area (towards Franklin Point) and portions inland of Highway One. The County also did not analyze views from Big Basin State Park directly inland. See page 2 of Exhibit H for applicable State Park and Reserve boundaries.

The County conditioned their approval for earth tone colors (muted green and brown) on the house to ensure that it would blend with the surrounding landscape. In terms of the portion of the proposed structure identified by the County as visible from the Reserve, the County required a forest green roof³ and a low-reflection glazing on all upper gable windows. The Applicant has proposed to plant 22 trees (8 each

³ The roof coloring would be accomplished by acid treating the copper to be used on the roof. Commission staff has viewed the roof sample and the result is a flat, dark, mottled brown and green surface.



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redwood and oak, and 6 cypress), and the County has required planting of 16 Douglas fir and/or Coast redwood trees (5 or more 48 inch box trees, 5 or more 15 gallon size, and 5 at 5 gallon size) between the house and the line of sight of Año Nuevo. Furthermore, even though an existing mature eucalyptus grove extends on the adjacent Lee property along the western property line, the Applicant has proposed, and the County required, the planting of a duplicate stand of Monterey cypress (paralleling the eucalyptus grove) on the Applicant's property to further screen the proposed project and protect against a possible scenario whereby the eucalyptus grove disappears. See County conditions in Exhibit C and proposed landscape plan in Exhibit I.

3. Consistency with Applicable LCP Policies

A. Existing Screening

Existing vegetation provides full to partial screening between public viewing areas and the proposed project site, depending on the viewpoint. This screening includes a large stand of eucalyptus trees (located primarily on the Lee parcel to the west of the subject site) and an arroyo riparian area located between the site and Highway One. Concerns have been raised that this vegetative screen may be altered over time as trees die off, and that its screening qualities will therefore diminish. Part of the reason for this concern is that some of the intervening forest here is made up of Monterey pine; a species currently severely threatened by the pine pitch canker disease.⁴ In light of this and other concerns, the Applicant's consulting forester, Stephen Staub, chair of the State's Pine Pitch Canker Task Force, evaluated the health and vitality of the intervening forest resource here (see *Analysis of Existing View Screen Forest including Monterey Pine Tree Status and Tree Screening Plan* by Stephen Staub and Stephen McGuirk dated May 2000; Exhibit K).

According to the forester's report, the eucalyptus grove trees are over 100 feet tall, densely planted in several rows, and are regenerating from seed. The grove is composed of trees in good health that are likely to persist as an intact grove for many years, both spreading and replacing itself over time in the absence of management. These trees are generally healthy and have a good life expectancy. As discussed above, the Applicants has proposed, and the County has conditioned the project for, a parallel row of Monterey cypress along the Applicant's side of the existing roadway. The eucalyptus grove provides a dense visual screen of the subject site from Highway One and portions of Año Nuevo State Reserve seaward of the Highway. While there is little reason to believe that the health of the grove will change, eucalyptus is a highly flammable tree that would be very susceptible in the event of a forest fire in the area. Eucalyptus may also be removed at some time to enhance native habitat values. The proposed Monterey cypress row represents a sort of insurance for such potential loss of the eucalyptus grove.

The riparian arroyo, butting up on the southern end of the eucalyptus grove, is a mixed forest mostly made up of eucalyptus, Monterey pine, Douglas fir, and coast live oak. The consulting forester estimates that these trees are within roughly 10 to 15 feet from hiding the building site from view (from Point Año Nuevo), and that this would likely occur in the next 5 to 10 years based on a 1 to 3 foot per year growth rate. This area should likewise continue to screen the majority of the Applicant's site from view from

⁴ See also ESHA finding for further discussion of the Monterey pine resource at this location and the toll of pine pitch canker disease.



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Highway One and the Reserve in the future.

In any case, it should be noted that *existing* vegetative screening is not necessarily indicative of *future* vegetative screening. In addition to natural events like forest fire and disease, human intervention on the subject site, and/or on intervening sites between the proposed residence and public view, can radically alter vegetative screening that is present today. A prescient example of the Commission's experience in this area can be found just upcoast of this site at Cascade Ranch.

In terms of potential threat to the vitality of Monterey pine here, Mr. Staub's sampling indicated that approximately 40% of the Monterey pine here have moderate to worse symptoms of pitch canker and will in all likelihood die within the next 5 years. However, Mr. Staub estimated that many of the good-sized Monterey pine will survive for between 10 and 40 years. The pine that die will be replaced by Douglas fir, madrone, and coast live oak which will grow more quickly when the shading Monterey pine die. Pine regeneration with better resistance over time to pitch canker is also be expected. Mr. Staub indicates that the although its composition may change over time, the forested area providing screening of the site from Año Nuevo can be expected to remain about the same in height, density and screening ability over time. Mr. Staub concludes:

The Hinman/Año Nuevo House will have a continuing vegetative screen from critical view areas of Año Nuevo State Park, for the following reasons: Within the existing forest screening the proposed house site from Año Nuevo, sufficient numbers of Monterey pines which are tolerant or resistant to pitch canker will persist over a 10 to 40 year period in combination with other existing tree species Douglas Fir, Blue Gum Eucalyptus, tanoak, bay laurel and redwood to provide meaningful visual screening of the house site. Existing seedling to pole sized trees of the same species and madrone, together with future regeneration, will grow up into the viewshed and maintain visual screening over the medium- to long-term, and continue to block the view of the house from Año Nuevo State Reserve. ... Views from Highway I are and will remain unaffected by the project due to topography and the existing Eucalyptus grove that will be retained.

To the extent the eucalyptus grove on the neighboring property remains a long-term screening element, public views of the majority of the site will remain screened. If, for whatever reasons, the eucalyptus grove were to be removed or otherwise altered, the site would become starkly visible from public viewing areas – particularly from Highway One. The Applicant's proposed cypress grove (just inland of the eucalyptus) offers some insurance against such a scenario, but, as proposed, may not provide adequate screening in such an event. The Applicant proposes to plant the cypress in 15 gallon containers along a straight line. Commission experience has generally been that uneven stands (planting differing ages/sizes of tree) present a better chance for overall success than do mono-age/size stands. Likewise, younger cypress (say in 5 gallon containers) often outperform those transplanted from larger sizes as they are more fully able adapt to the soils and climate of the site. Also, staggered planting can also help to ensure adequate screening that is often not possible from a single line of trees.

Any approval here would need to ensure the long-term viability and effectiveness of the proposed tree plantings located between the site and Highway One in order to ensure continued screening of the majority



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of the overall site (including the proposed building pad location) from view from public vantage points along Highway One and Año Nuevo Reserve

B. View from Highway 1

Highway One seaward of the project site is designated by the LCP as a “Scenic Road.” This section of Highway 1 is also an officially designated portion of the California Scenic Highway Program. Per LCP Policy 5.10.10, the public vista from Highway One “shall be afforded the highest level of protection.” To the extent the long-term viability and effectiveness of existing and proposed tree screening can be ensured, this intervening forest resource, as well as general site topography, should ensure that development at this location is not visible from Highway One and thus consistent with LCP Policy 5.10.10.

C. View from Año Nuevo State Reserve

LCP Policy 5.10.3 protects the public vista from Año Nuevo State Reserve. Año Nuevo State Reserve covers approximately 4,000 acres, including roughly 3,000 acres inland of Highway One seaward and north of the subject site. Año Nuevo is a State Reserve as opposed to a State Park. The California Public Resources Code identifies State Reserves as “areas embracing outstanding natural and scenic characteristics of statewide significance.” California Department of Parks and Recreation (DPR) describes the Reserve as follows:⁵

Fifty-five miles south of San Francisco and the Golden Gate, a low, rocky, windswept point juts out into the Pacific Ocean. The Spanish maritime explorer Sebastian Vizcaino sailed by the point on January 3, 1603. His diarist and chaplain of the expedition, Father Antonio de la Ascension, named it Punta de Año Nuevo for the day on which they sighted it in 1603. New Year's Point. Today, the point remains much as Vizcaino saw it from his passing ship. Lonely, undeveloped, wild. Elephant seals, sea lions, and other marine mammals come ashore to rest, mate, and give birth in the sand dunes or on the beaches and offshore islands. It is a unique and unforgettable natural spectacle that hundreds of thousands of people come to witness each year.

Año Nuevo State Reserve is the site of the largest mainland breeding colony in the world for the northern elephant seal, and the interpretive program has attracted increasing interest every winter for the past 19 years. People who hope to see the seals during the winter breeding season are urged to get their reservations early. The males battle for mates on the beaches and the females give birth to their pups on the dunes. During the breeding season, December through March, daily access to the reserve is available via guided walks only. Most of the adult seals are gone by early March, leaving behind the weaned pups who remain through April. The elephant seals return to Año Nuevo's beaches during the spring and summer months to molt and can be observed during this time through a permit system.

According to DPR, Reserves require the highest level of protection within the California State Park System. The U.S. Department of Interior has similarly designated Año Nuevo State Reserve as one of the

⁵ From the California Department of Parks and Recreation web page for Año Nuevo State Reserve (<http://parks.ca.gov/>).



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86 ‘National Natural Landmarks’ in the United States. According to the Department of Interior:

National Natural Landmarks are management areas having national significance as sites that exemplify one of a natural region's characteristic biotic or geologic features. The site must have been evaluated as one of the best known examples of that feature. These areas must be located within the boundaries of the United States or on the Continental Shelf and are designated by the Secretary of the Interior. To qualify as a National Natural Landmark, an area must contain an outstanding representative example(s) of the Nation's natural heritage, including terrestrial communities, aquatic communities, landforms, geological features, habitats of native plant and animal species, or fossil evidence of the development of life on earth.

Accordingly, Año Nuevo State Reserve is a resource of tremendous local, regional, statewide, and national significance.

There are several structures currently visible within the Año Nuevo viewshed. These include the Big Creek Lumber operation immediately downcoast of Waddell Creek, the RMC Lonestar cement plant in Davenport in the downcoast distance, and the Boling residence (APN 057-061-17) due south of the Hinman project site. For the most part, these structures are visible from the Park, but are sufficiently far away as to make them blend somewhat into the landscape. The Boling residence is more visible than the others since it is closer, is not screened by intervening vegetation, and has white-painted trim on the windows. The presence of this building provides a benchmark for understanding how the construction of buildings in Año Nuevo's wild viewscape can change the experience of the Reserve, especially if unnatural building colors, such as white painted windows are used. The most prominent structure visible from within the Park is the Año Nuevo visitors center itself. However, the visitors center approximates a large agricultural barn and is compatible with the overall Park aesthetic.

Commission staff field verification⁶ (as seen from the main Reserve path extending from the parking lot to the dunes) found the story-poles and netting (erected to simulate the mass of the proposed structures here) to be barely visible to the unaided eye from the main Reserve trail to the dunes. For a variety of reasons, however, it is difficult to conclude whether the narrow story poles and netting truly approximate the proposed project given that the overall mass cannot easily be duplicated by netting. Likewise, it is not clear that field verification on one semi-sunny afternoon in June can adequately suffice for what will eventually be a year round view (i.e., subject to different weather, angles of sun, elevations of the Año Nuevo Dunes, etc.). In addition, as described above, the Reserve stretches far to the north around Franklin Point and on to Gazos Creek. There are any number of less traveled, though publicly important, viewing areas present within the reserve that this one view angle cannot account for. As such, it can be concluded that, at a minimum, a portion of the proposed project would be visible from the Reserve.

Moreover, nighttime views (where one would expect light to be coming from the proposed residence) cannot be approximated by story poles viewed during the day. Such nighttime lights in the middle of an otherwise darkened wilderness area particularly impact the viewshed.

⁶ On the afternoon of June 7, 2000.



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DPR's position is that Año Nuevo is a special wilderness area, and a State and national treasure, from which the viewshed should remain unspoiled to the maximum degree possible. The largely undeveloped stretch of coast surrounding the Reserve is a critical element of the overall grandeur of the Reserve that deserves the highest level of protection. DPR concludes (see DPR's letter to the County Board of Supervisors in Exhibit N):

The California Department of Parks and Recreation believes that the proposed development project, as currently sited and designed, will have a negative impact on the scenic characteristics and quality of Año Nuevo State Reserve.

Applicable LCP policies dictate protection of public views through “minimizing disruption” (LCP Policy 5.10.3) so as to “have minimal to no adverse impact upon identified visual resources” (LCP Objective 5.10.b). LCP Policy 5.10.11 requires development visible from rural scenic roads, such as Highway One in this rural stretch of the County, to be sited outside of public view. LCP Policy 5.5.2 designates this site as within a Least Disturbed Watershed within which undeveloped natural areas are encouraged to be retained to protect the resource values within. LCP Policy 5.10.3 concludes that screening shall be provided where development is “unavoidably sited” within visual resource areas. In this case, the proposed residence is not “unavoidably sited” in the viewshed. In fact, much of the remainder of the 50 acre property at lower elevations is completely hidden from view and even a large agricultural residence could easily be placed outside of the public viewshed here.

Because Año Nuevo State Reserve is such an important public resource, and because the surrounding North Coast area appears as substantially undeveloped natural open space, any development in this area raises concerns in terms of protecting this critical public viewshed. In this case, the proposed project would introduce at least a portion of a large residential structure into a critical public viewshed when other feasible siting options are available that would remove this development from view. Moreover, the cumulative effect of allowing manmade structures on all legal parcels in the Reserve's viewshed would quickly undermine its unique “lonely, undeveloped, wild” character for which it has received State and national acclaim.⁷ As such, the Commission finds that the project, as proposed, is not consistent with LCP Policies 5.10 et seq protecting the visual resource here. Specifically, the project is inconsistent with the policy to site development outside of important public vistas when it is feasible to do so.

D. View from offshore

LCP Policies 5.10 et seq also protect views from offshore locations of the coast. In other words, the views of boaters, kayakers, swimmers, surfers, et cetera who may be present at different times in the water. Because of the above-described intervening topography and vegetation, most of the proposed residence would be screened from ocean oriented views. However, as described above, at least a portion of the subject residence would be in the Año Nuevo viewshed; this portion of the residence would likewise be in the ocean viewshed. In fact, as one moved further out to sea, more of the residence might be present in this viewshed as the viewing angle flattened out; although this effect would likely be tempered

⁷ See also cumulative impact findings.



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somewhat by the increase in distance.⁸

The offshore waters are part of the Monterey Bay National Marine Sanctuary. Public views from this offshore area of the largely undisturbed north coast represent an important public resource. Although these views are not unfettered by existing development,⁹ structural additions within this critical public viewshed need to be analyzed carefully and applicable LCP policies construed broadly to protect this resource accordingly. In this case, as discussed above, there are other siting options available that would not add development to this public vista. As such, the Commission finds that the proposed project does not conform with LCP Policies 5.10 et seq protecting the viewshed from offshore. Again, the project is inconsistent with the policy to site development outside of important public vistas when it is feasible to do so.

E. View from onshore trails

Although difficult to say with certainty, it is possible that proposed site might be partially visible from some nearby vantage points along the ridgeline of the coastal range. DPR indicates that the site may be visible from the West Ridge Trail within adjacent Big Basin State Park. There may be other locations as well. It is possible that some hikers along existing trails, and/or along future trails that may be developed should adjacent private lands come into the public domain, may be able to catch glimpses of the proposed subject residence were it to be constructed at this location. Views of such residential development when hiking along rural mountain trails can be extremely disruptive to the hiking experience.

In this case, such glimpses (if any would exist) of the proposed project would be similar to existing glimpses of the neighboring residential structures already developed at this inland foothill location. As far as staff knows, the site is not immediately adjacent to any existing public trails. Any approval would need to ensure that public trail views are not unduly impacted.

F. Visual Compatibility

LCP Sections 5.10.5, 13.10.313, 13.10.323, 13.10.325, and 13.20.130(b)(1) generally address the need for the proposed large residential development to be sited, designed and landscaped to be visually compatible and integrated with the character of the surrounding area. Such policies generally dictate the parameters of size, mass, scale, and overall design in relation to the surrounding area. Review of consistency with such policies is more often than not based upon qualitative, discretionary judgement as opposed to more specific requirements. As such, it can be difficult to measure consistency with such objectives.

Nonetheless, there are at least two general themes to test for consistency in this case: 1) compatibility with the surrounding built environment, namely the immediately surrounding “neighborhood” community made up of adjacent large agricultural parcels with individual residences; and 2) compatibility with the overall open space environs of the larger north coast area.

⁸ The site is approximately 2 miles inland from Año Nuevo Point.

⁹ All of the structures visible from Año Nuevo Point would likewise be visible from offshore.



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In terms of compatibility with the local “neighborhood” community, the neighboring parcels are currently developed with large (approximately 3,500 and 6,000 square foot) single family dwellings and miscellaneous outbuildings on relatively large (63 and 13 acre) agriculturally zoned parcels. The residence to the north is built in old farm house style while the residence to the south is in a modern log cabin style. The proposed Lee residence (under separate appeal to the Commission) to the west (though not visible from the subject site or the existing adjacent residences due to the intervening eucalyptus grove), would be more modern “Sea Ranch” angular style on roughly 84 acres.

Consistency with the local “neighborhood” can be evaluated primarily on architectural style and overall mass/scale. In terms of architectural style, although it might be argued that the proposed gothic revival residential style of the Hinman project is quite architecturally interesting, it could not be said to be similar to the existing character of development in the area. In fact, the Hinman project is modeled after a plantation home in South Carolina and would be unlike any other style of building in the immediate area. The proposed house style is significantly more formal and ornate than that generally found on other agricultural parcels on the Santa Cruz County north coast. Moreover, although the general pattern of development in the area might be characterized as larger residences on large agricultural parcels, the proposed Hinman house would be substantially larger; almost three times the square footage of the largest neighboring home. As such, its large overall square footage and height raise an issue in terms of compatibility with the surrounding local “neighborhood” community. Even were the “neighborhood” sample widened to other residential dwellings on agricultural parcels in the region, the proposed structure would be one of the largest, if not the largest, residence on the north coast.

In terms of compatibility with the larger open space agricultural north coast, such large residential development within the public viewshed is distinctly counter to the character of this larger area. Furthermore, although the majority of north coast Santa Cruz is largely undeveloped with a smattering of scattered agricultural and residential structures, this particular stretch surrounding Año Nuevo is even less developed than others and is even more so characterized by a wilderness feel and scale. In addition, as described earlier, the subject site is located within a Least Disturbed Watershed within which open retention of the undeveloped lands here is encouraged (LCP Policy 5.5.10).

To be consistent with the north coast’s undeveloped character, the subject development would need to be placed outside of the public viewshed. Because it is not, it raises substantial visual compatibility issues in terms of the proposed project’s conformance with the LCP.

G. Compatibility of Helicopter Use

Though not a part of the application in front of the Commission, the Applicant indicates that he intends to commute via helicopter from the subject site.¹⁰ Although some amount of sporadic helicopter use along this stretch of the coast is expected (e.g., for site-seeing), any such commuter helicopter use on a regular basis raises questions as to whether this noisy, urban activity would be compatible with the character of surrounding open space wilderness area – specifically with the ongoing wildlife and recreational program

¹⁰ The use of a commuter helicopter at this location raises a host of coastal resource issues. See also ESHA finding and see also separate helicopter finding.



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at Año Nuevo State Reserve and Big Basin State Park. Multiple helicopter landings and takeoffs, such as that associated with a commuter helicopter use, are not consistent with the sense of serenity and open space that is evoked by the surrounding public wilderness areas, and would be detrimental to the public programs there. In particular, as described above, Año Nuevo State Reserve is a resource of tremendous local, regional, statewide, and national significance. Such private commuter helicopter use would have a profound effect on this national treasure used by hundreds of thousands of coastal visitors and is inconsistent with the north coast's undeveloped character. As such, it is not "integrated with the character of the surrounding neighborhood or areas" (IP Section 13.20.130(b)(1)) and it is not "subordinate to the natural character of the site" (IP Section 13.20.130(c)(2)), and is inconsistent with the LCP compatibility policies cited in these findings.

3. Visual and North Coast Character Conclusion and Parameters for Project Modification

The proposed project is located within the particularly critical public viewshed surrounding the Año Nuevo State Reserve along a stretch of mostly undeveloped San Mateo County – Santa Cruz County coastline. LCP visual policies require development here to be sited outside of this viewshed when it is feasible to do so, and require development to be visually compatible and integrated with the character of the surrounding area. Though the proposed development is mostly hidden by topography and intervening vegetation from public viewing areas, portions of the proposed project would be visible from Año Nuevo State Reserve, the Monterey Bay National Marine Sanctuary, and possibly other inland State Park and other public lands. Existing screening located on neighboring properties may not be indicative of future vegetation (i.e., eucalyptus grove). The subject structure is distinctly different than the existing size, scale, and design of surrounding residential development, and much different than that of typical residential development on agricultural north coast properties. The potential commuter helicopter use would be contrary to the wilderness character evoked by the area within which this proposal is located, and would detract from the overall experience for coastal visitors to Año Nuevo State Reserve. As such, the Commission finds that the project, as proposed, is not consistent with the LCP's visual resource policies cited in this finding.

In order to find the project consistent with the LCP's visual and character resource policies, the project must be modified (see also "Project Modifications to Result in an Approvable Project" on page 55). Any such modifications must ensure that the project is permanently kept out of the public viewshed and commuter helicopter use curtailed. To the extent that a modified project can be kept completely outside of the public viewshed, questions of design and immediate neighborhood compatibility are lesser concerns here; the public would not be viewing this structure located on inland private roads. Rather, the immediate handful of neighbors would be those for which this compatibility question would mostly be reserved. In this case, each of the surrounding neighbors have submitted letters of support for the design proposed by the Applicant (see Exhibit M).

B. Environmentally Sensitive Habitat Areas



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1. Applicable Policies

The LCP is very protective of environmentally sensitive habitat areas. LCP wetland and wildlife protection policies include Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection). In general, these LCP policies define and protect ESHAs, allowing only a very limited amount of development at or near these areas. Relevant LCP policies include:

LUP Objective 5.1 Biological Diversity. *To maintain the biological diversity of the County through an integrated program of open space acquisition and protection, identification and protection of plant habitat and wildlife corridors and habitats, low-intensity and resource compatible land uses in sensitive habitats and mitigations on projects and resource extraction to reduce impacts on plant and animal life.*

LUP Policy 5.1.2 Definition of Sensitive Habitat. *An area is defined as a sensitive habitat if it meets one or more of the following criteria: (a) Areas of special biological significance as identified by the State Water Resources Control Board. (b) Areas which provide habitat for locally unique biotic species/communities, including coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, mapped grasslands in the coastal zone and sand parkland; and Special Forests including San Andreas Live Oak Woodlands, Valley Oak, Santa Cruz Cypress, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests. (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below. (d) Areas which provide habitat for Species of Special Concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database. (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines. (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society. (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves. (h) Dune plant habitats. (i) All lakes, wetlands, estuaries, lagoons, streams and rivers. (j) Riparian corridors.*

LUP Policy 5.1.3 Environmentally Sensitive Habitats. *Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are: (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.*

LUP Policy 5.1.6 Development Within Sensitive Habitats. *Sensitive habitats shall be protected against any significant disruption of habitat values; and any proposed development within or*



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adjacent to these areas must maintain or enhance the functional capacity of the habitat. Reduce in scale, redesign, or, if no other alternative exists, deny any project which cannot sufficiently mitigate significant adverse impacts on sensitive habitats unless approval of a project is legally necessary to allow a reasonable use of the land.

LUP Policy 5.1.7 Site Design and Use Regulations. *Protect sensitive habitats against any significant disruption or degradation of habitat values in accordance with the Sensitive Habitat Protection ordinance. Utilize the following site design and use regulations on parcels containing these resources, excluding existing agricultural operations: (a) Structures shall be placed as far from the habitat as feasible. (b) Delineate development envelopes to specify location of development in minor land divisions and subdivisions. (c) Require easements, deed restrictions, or equivalent measures to protect that portion of a sensitive habitat on a project parcel which is undisturbed by a proposed development activity or to protect sensitive habitats on adjacent parcels. (d) Prohibit domestic animals where they threaten sensitive habitats. (e) Limit removal of native vegetation to the minimum amount necessary for structures, landscaping, driveways, septic systems and gardens; (f) Prohibit landscaping with invasive or exotic species and encourage the use of characteristic native species.*

LUP Objective 5.2 Riparian Corridors and Wetlands. *To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality, erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.*

LUP Policy 5.2.1 Designation of Riparian Corridors and Wetlands. *Designate and define the following areas as Riparian Corridors: (a) 50' from the top of a distinct channel or physical evidence of high water mark of perennial stream; (b) 30' from the top of a distinct channel or physical evidence of high water mark of an intermittent stream as designated on the General Plan maps and through field inspection of undesignated intermittent and ephemeral streams; (c) 100' of the high water mark of a lake, wetland, estuary, lagoon, or natural body of standing water; (d) The landward limit of a riparian woodland plant community; (e) Wooded arroyos within urban areas.*

Designate and define the following areas as Wetlands: Transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water periodically or permanently. Examples of wetlands are saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens....

LUP Policy 5.2.3 Activities Within Riparian Corridors and Wetlands. *Development activities, land alteration and vegetation disturbance within riparian corridors and wetlands and required buffers shall be prohibited unless an exception is granted per the Riparian Corridor and Wetlands Protection ordinance. As a condition of riparian exception, require evidence of approval for development from the U.S. Army Corps of Engineers, California Department of Fish and Game, and other federal or state agencies that may have regulatory authority over*



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activities within riparian corridors and wetlands.

LUP Policy 5.2.5 Setbacks From Wetlands. *Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.*

LUP Policy 5.2.7 Compatible Uses With Riparian Corridors. *Allow compatible uses in and adjacent to riparian corridors that do not impair or degrade the riparian plant and animal systems, or water supply values, such as non-motorized recreation and pedestrian trails, parks, interpretive facilities and fishing facilities. Allow development in these areas only in conjunction with approval of a riparian exception.*

LCP Section 16.32.090(c) Approval Conditions. *All development activities in or adjacent to a sensitive habitat area shall conform to the following types of permitted uses, and the following conditions for specific habitats shall become minimum permit conditions unless the approving body pursuant to Chapter 18.10 finds that the development will not affect the habitat based on a recommendation of the Environmental Coordinator following a biotic review pursuant to Section 16.32.070.*

<i>(A) Environmentally Sensitive Habitat Areas</i>		
<i>Type of Sensitive Area</i>	<i>Permitted or Discretionary Uses</i>	<i>Conditions</i>
<i>1. All Essential Habitats</i>	<i>Nature study & research, hunting, fishing and equestrian trails that have no adverse impacts on the species or the habitat; timber harvest as a conditional use</i>	<i>Preservation of essential habitats shall be required</i>

...

<i>(C) Habitats of Locally Unique Species</i>		
<i>Type of Habitat</i>	<i>Permitted or Discretionary Uses</i>	<i>Conditions</i>
<i>1. Special Forests (San Andreas, Live Oak, Woodland/Maritime Chaparral, Indigenous Ponderosa Pine Forest, and Indigenous</i>	<i>forest preserve, natural observation, educational instruction, residential uses, meeting performance criteria</i>	<i>Structures shall be clustered, and/or located near to any existing structure.</i> <i>Landscaping plans shall</i>



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Monterey Pine Forest)		<i>include characteristic native species.</i> <i>Applicants shall enter into a “declaration of restriction” allowing the development and utilization of a prescribed burning program or other means to mimic the effects of natural fires.</i> <i>For residential development, site disturbance shall not exceed ¼ acre per unit or 25% of the parcel, whichever is less.</i>
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2. County-Approved Project

According to the project biotic assessment¹¹ the subject site has a number of individual sensitive habitat areas including Monterey pine forest along the eastern property line, an unnamed wetland/riparian system along the southwest portion of the site to which much of the site drains, and patches of native grasslands. More importantly, USFWS and CDFG have concluded, and the Applicant’s biotic reports concur, that the entire lower portion of the site (below the pine forested area at the higher elevations) is habitat for both San Francisco garter snake (a Federal and State listed Endangered Species) and California red-legged frog (a Federal listed Threatened Species and a State listed Species of Special Concern). red-legged frog have been positively identified in both the Applicant’s pond as well as the pond on the immediately adjacent farm property to the north. The elusive San Francisco garter snake, a species near extinction, has not been positively identified on the site, but is expected to be present by both USFWS and CDFG.

In addition, although individual specimens have not been identified on the site, suitable habitat exists in and around the wetland/riparian system for Southwestern pond turtle, California tiger salamander, Yellow warbler. One Cooper’s hawk was identified on the site. The Federal and State status of these species is as follows:

¹¹ The project site has been well-reviewed biologically during both the course of the County’s review as well as the materials developed since the project was appealed to the Commission. Important studies include: (1) *Hinman Property (Año Nuevo House) Biotic Assessment* by The Habitat Restoration Group (dated May 20, 1997) as reviewed and accepted by the County’s consulting biologist, Bill Davilla on November 5, 1998; (2) *Hinman Site Constraint Analysis & Maps*, summary constraints analysis prepared by the Applicant, dated September 12, 2000 (see Exhibit P); and (3) *An Assessment of Habitat for the San Francisco Garter Snake and the California Red-legged Frog on the Brian Hinman Property, Santa Cruz County, California* by Dr. Sam McGinnis dated October 15, 2000 and amended November 2, 2000 (see Exhibit D).



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Species	Federal Status	State Status
San Francisco garter snake	Endangered Species	Endangered Species
California red-legged frog	Threatened Species	Special Concern Species
Southwestern pond turtle	Special Concern Species	Special Concern Species
California tiger salamander	Candidate Species	Special Concern Species
Yellow warbler	None	Special Concern Species
Cooper's hawk	None	Special Concern Species

By virtue of the State and Federal Endangered Species Act listings, the San Francisco garter snake and red-legged frog habitat area is ESHA per the LCP (LUP Policies 5.1.2(f) and 5.1.3, IP Section 16.32.040). This garter snake and frog habitat area encompasses the wetland/riparian system. In any case, wetlands and riparian corridors are themselves categorically defined in the LCP as Sensitive Habitats (LUP Policy 5.1.2(i) and (j)) and designated as ESHA (LUP Policy 5.1.3) and further as Essential Habitats (IP Section 16.32.040).

Native Monterey pine (*Pinus radiata*) and native Monterey pine forest are explicitly defined by the LCP as Sensitive Habitat (LUP Policy 5.1.2(b) and IP Section 16.32.040); by virtue of this and by virtue of its California Native Plant Society List 1B status (i.e., “Plants Rare, Threatened, or Endangered in California and elsewhere”), native Monterey pine is defined by the LCP as ESHA within the meaning of the Coastal Act (LUP Policy 5.1.3 and IP Section 16.32.040) and further defined as an Essential Habitat (IP Section 16.32.040).

The County found that the proposed residence was sited approximately 750 feet from the wetland/riparian system and potential habitat for listed species. The County conditioned the project for erosion control and grading best management practices to avoid any disruption of this area. The County prohibited widening of the access road in the vicinity of the wetland/riparian system. The County found that although the project was located within the Monterey pine forest resource, the only living pines that would be removed would be a few small saplings. The County conditioned the project to protect trees during construction and to limit any future tree removal.

See Exhibit C for County conditions.

3. Consistency with Applicable LCP Policies

A. San Francisco Garter Snake/California red-legged frog Habitat

Background on Frog and Snake Habitat

The pond area on the subject site is known habitat for California red-legged frog, at least four adults having been identified there as recently as July of this year). As detailed above, California red-legged frog is a federally-listed threatened species and a state-listed species of concern. In addition to the subject site, the frog has also been identified in the farm pond on the adjacent northern parcel (about 1,000 feet north of the Applicant's pond). In addition, there is an in-stream pond to the southwest of the Applicant's pond in Año Nuevo Creek (roughly 1,500 feet from the Applicant's pond); no red-legged frog have been identified there, but this may provide habitat as well. See page 8 of Exhibit H for pond locations. Studies previously



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conducted for CDFG by the Applicant's consulting biologist, Dr. Sam McGinnis, a well-known expert on the frog and garter snake, documented the presence of the frog in every ranch pond studied in and around the Año Nuevo area. More recent surveys for projects also currently appealed to the Commission (e.g., the Blank and Lee residences in San Mateo County) have provided corroborating evidence of such sightings; notably the adjacent Lee pond due west of the Applicant's pond providing long-standing habitat for the frog. The frogs are known to migrate between such ponds regularly, creating a web of such habitat corridors in the Año Nuevo area. USFWS recently proposed to designate much of the Año Nuevo area, including the subject site, as Critical Habitat for the red-legged frog.

The San Francisco garter snake has not been positively identified on this site, but USFWS, CDFG, and the Applicant's consulting frog and snake expert concur that its presence is likely at the subject site. As detailed above, San Francisco garter snake is a federally-listed and state-listed endangered species – a species that is nearly extinct. The aforementioned CDFG studies documented the presence of this elusive species at all but one of the Año Nuevo ranch pond sites that supported the red-legged frog.¹² As stated by Dr. Sam McGinnis:

In order to establish the presence or absence of this scarce and usually elusive snake, a minimum of three month of spring trapping in and around a potential pond feeding habitat is needed. The [San Francisco Garter Snake] SFGS is a feeding specialist and relies almost exclusively on the [California Red-legged Frog] CRF, small Bullfrogs, and the abundant Pacific chorus Frog for food. Thus trapping, especially at a pond with very dense surrounding vegetation such as that on the project site, is usually necessary to get a specimen in hand.

However, my 1987 survey and subsequent studies of the SFGS in coastal San Mateo County has demonstrated that when several ranch ponds occur within a mile to two of each other and especially when these are connected by a riparian drainage system, all such pond with suitable shoreline vegetation and a compliment of frog prey species have been colonized by the SFGS. It is my professional opinion that this has been the case at the project site pond, and therefore all future proposed land use changes for this acreage should be made with the presence of these two special status species in mind. In this circumstance, it would mean preservation of not only the pond habitat but also the surrounding upland annual grassland-coyote brush community. Although the CRF required only a permanent pond habitat, the SFGS must have a combination of both a foraging pond habitat and an upland retreat habitat adjacent to the pond.

Upland retreat sites are necessary for the endangered snake because they provide both winter hibernation and birthing retreats in the form of rodent burrow systems which do not flood during the winter rain periods. The burrows of the California Meadow Vole provide the majority of such retreats. ...The upland-brush community which occupies most of the project site presents an ideal retreat site for the SFGS...[and]...the CRF would also use these burrows as estivation sites. Thus the preservation of both the pond and its riparian community plus the upland annual grassland-coyote brush habitat is essential for the conservation of both special status species at this site.

¹² The one pond that did not was an irrigation pond whose barren shoreline was not conducive to snake foraging.



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As such, and as corroborated by USFWS and CDFG, the majority of the subject site is critical habitat for both San Francisco garter snake and California red-legged frog. In fact, USFWS indicates that although San Francisco garter snake habitats are located in various disjoint locations between Año Nuevo and Pacifica to the north, the area in and around Año Nuevo State Reserve, including the Applicant's site, is home to the most important San Francisco garter snake habitat remaining today. The habitat area on the Applicant's site should be understood as part of a larger habitat area in and around the Año Nuevo area connected by migratory corridors. The riparian corridor extending to the northwest of the subject site along the adjacent Lee property in San Mateo County providing a particularly suitable migratory passageway for the garter snake (i.e., because the snake prefers using such drainage features as corridors for movement).

Impacts to Frog and Snake Habitat

LCP Policy 5.1.2 defines the San Francisco garter snake/California red-legged frog habitat as ESHA. LCP Policies 5.1.3, 5.1.6 and 5.1.7 dictate that development is strictly limited within this area, and that development that does occur shall not significantly disrupt habitat values (5.1.6), shall be placed as far from the habitat as feasible (5.1.7), and shall require deed restrictions, easements, or other such measures to protect such habitats (5.1.7).

In this case, the Applicant proposes residential development that, itself, would be outside of the area deemed snake and frog habitat by USFWS and CDFG.¹³ However, there remain several concerns with this proposed site location and associated development.

First, an access driveway from the existing private road would be necessary to reach the subject site (see Exhibits H and I). The Applicant proposes this as a 12 foot wide paved road with 2 foot shoulders on either side (16 feet total width), approximately 1,400 linear feet. The road itself would be placed within an area of upland habitat for the garter snake and would bisect a potential migration corridor for the red-legged frog (i.e., the corridor extending from the Applicant's pond to the Año Nuevo creek in-stream pond to the southeast). This driveway would create an area of disturbance in this habitat of roughly 18,000 square feet. Such development within ESHA is not consistent with the LCP's ESHA policies.

Second, the existing unpaved access road (used now exclusively by the existing Boling residence to the south) would be paved, but not widened, along the western edge of property adjacent to the frog and snake habitat area. The pavement would, at times, be expected to attract snakes seeking warmth retained in the asphalt. The residential use would not only be expected to generate traffic associated with a typical residence (the County estimated 10 vehicle trips per day based on Institute of Traffic Engineers standards), but it has been the Commission's experience that such large residential development (approximately 15,000 square feet/15 rooms, roughly 25,000 square feet of manicured ornamental landscaping and courtyard) generates additional vehicular trips for support services (such as maids, gardeners, etc.). The combination of the attractive nuisance presented by the warmth of the asphalt, and the increase in vehicular traffic along both the access road and driveway, would be expected to lead to frog and snake mortality. Although it is difficult to pinpoint with accuracy the extent of expected frog and snake

¹³ The site area proposed is, however, within the native Monterey pine forest that is also ESHA; see findings that follow this section.



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death, such adverse impacts to endangered and threatened species are not consistent with the LCP's ESHA policies.

Third, any residential development brings with it noise, lights, pets, and general activity that may scare off frogs and snakes and/or lead directly to injury and death mortality (e.g., predation from domestic cats), and is not generally conducive to fostering habitat values. The lights that would be visible from the proposed residence at night might also have some impact on nighttime foraging and movement. Such impacts are tempered somewhat because the residence is proposed approximately 750 feet from the pond itself and the pond is enclosed by dense vegetation, however, the critical upland and migratory habitat extends to within 150 feet or so of the residence. Given the extent of frog and snake habitat, however, such would be the case with any site on the subject property. It is difficult to measure the extent of habitat disruption from such activities. However, given that the habitat here is for a nearly extinct endangered species, the most extreme caution is warranted. As such, the disruption from such typical residential activities is not consistent with the LCP's ESHA policies.

Fourth, paving the road is expected to slightly increase runoff (from increased impervious surface) while at the same time reducing sediment transfer into the resource. However, the existing roadway is fairly hardened oil and gravel that currently drains into the pond/riparian system here, so there is not likely to be a tremendous amount of increased runoff. The limited additional runoff and reduced sediment loading is not likely to lead to a significant disruption of pond/riparian resource.

Finally, though not a part of the application in front of the Commission, the Applicant indicates the he intends to commute via helicopter from the subject site.¹⁴ It is not clear where the Applicant intends to land his helicopter on the site, but it is clear that any of the relatively flatter portions of the property that may be pressed into such service are ESHA. Such helicopter landings and takeoffs would be expected to significantly disrupt the listed species habitats, frightening away individual specimens as well as potentially crushing those unfortunate enough to be caught under the helicopter landing gear. Raptors and other types of birds would be expected to be frightened away as well.

Frog and Snake Conclusion

The proposed development will adversely affect endangered and threatened species habitat inconsistent with the protection afforded this resource by the LCP. Similar to Coastal Act section 30240, the Santa Cruz County LCP does not allow non-resource dependent development within ESHA. The proposed access driveway within ESHA is not dependent on the resource and does not meet any of the other LCP Policy 5.1.3 tests. Moreover, introduction of the residential use in close proximity to the upland frog and snake habitat here, as well as the increase in activity on both the existing road and the new driveway, will significantly and adversely impact listed species habitat values as described above in this finding inconsistent with LCP Policies 5.1.6, 5.1.7, and LCP Section 16.32.090(c)(A)(1). Commuter helicopter use would likewise significantly disrupt listed species habitat contrary to the LCP. Moreover, this on-site sensitive frog and snake habitat is not proposed to be protected by deed restriction or easement as

¹⁴ The use of a commuter helicopter at this location raises a host of coastal resource issues. See also visual compatibility finding and see also separate helicopter finding.



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required by LCP Policy 5.1.7. As such, the Commission finds that the project, as proposed, is not consistent with LCP ESHA policies protecting the significant San Francisco garter snake and California red-legged frog habitat at this site.

B. Monterey Pine Forest

Status of the Pine Resource¹⁵

Along the Pacific Coast, isolated groves of several different pine species (Monterey pine, Bishop pine, Santa Rosa Island pine, Torrey pine) provide some of the most interesting and scenic landscapes in the coastal zone. These isolated endemic occurrences are termed maritime closed-cone forests. The closed-cone characteristic is typical for fire-influenced forest habitats. On a very hot day (rare in these foggy locales) or in response to fire, the cones open and release their seed. Following a light ground fire, a virtual carpet of seedlings can be found beneath the old tree, after winter rains. Reproduction is most vigorous in recently burned areas, and weakest in the areas that receive the greatest fire-suppression efforts (i.e., the areas that have been divided and developed with residential estates). In a well-manicured yard, pine reproduction is essentially absent.

Within its native range, Monterey pine is found in just four places in the world: the main native stand mantling the Monterey Peninsula; the small stand here near Año Nuevo; the Cambria and Hearst Ranch stands in North San Luis Obispo County, parts of which are the least disrupted of the remaining groves; and a remote and little-known pine forest habitat on the Guadalupe and Cedros Islands located off the Pacific coast of Mexico. The Guadalupe Island grove's survival is uncertain, with fuelwood collecting, overgrazing by goats and severe soil erosion as primary threats. The U.S. groves, in contrast, are generally threatened primarily by habitat conversion (e.g., housing and resort development, golf course development, urbanization), soil erosion (road grading, recreational overuse), and invasive exotic plants (genista or "broom", pampas grass, acacia, eucalyptus, etc.). Commercial logging was an issue in the past, but today is largely confined to small salvage operations.

A more recent concern for the health and viability of the native Monterey pine forest comes from the threat

¹⁵ Sources for some of the information in this section include: *Monterey Pine Forest Conservation Strategy Report*, Jones & Stokes Associates, Inc., prepared for the California Department of Fish and Game, December 1996; *Monterey Pine Forest Ecological Assessment: Historical Distribution, Ecology, and Current Status of Monterey Pine*, Jones & Stokes Associates, Inc., prepared for the California Department of Fish and Game, September 12, 1994; *Pitch Canker in California*, Andrew J. Storer, Thomas R. Gordon, David L. Wood, and Paul L. Dallara (from the Pitch Canker Task Force Web Site April 1999); *Current Status of Pitch Canker Disease in California*, CDF Tree Notes #20, July 1995; *California Forestry Note #110*, CDF, November 1995; *Pitch Canker Action Plan, Appendix D to SLO County North Coast Area Plan public hearing document*, December 1996; *Pine Pitch Canker Task Force Position Paper*, California Forest Pest Council, January 23, 1997; *RFP for "Developing Programs for Handling...Infected Pine Material within the Coastal Pitch Canker Zone..."*, CDF, December 1997; *The Cambria Forest*, Taylor Coffman, Coastal Heritage Press, 1995; *Pebble Beach Lot Program Final Environmental Impact Report*, EIP Associates, June 1997.



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of the pine pitch canker epidemic. According to the California Department of Forestry (CDF), pine pitch canker is a rapidly spreading fungal disease which infects trees primarily through insect wounds in the bark; Monterey and Bishop pines are especially susceptible. CDF also believes that the fungal spores are unintentionally carried over long distances by conveyance of contaminated materials. In addition to transport of contaminated materials by humans, typical vectors for the pathogen include bark beetles and other insects. All three of California's native stands of Monterey pines have now become infected; the status of the island stands in Mexico is less certain.

Pitch canker was confirmed on the Monterey Peninsula at the Pebble Beach fire house in April 1992, then at the Año Nuevo stand in December 1992, followed by the Cambrian stand in November 1994. CDF characterizes the threat to all native Monterey pine stands in California as "severe." On June 4, 1997 the State Board of Forestry defined a Pitch Canker Zone of Infestation which includes all of the coastal counties extending from Mendocino to the Mexico border. While one goal for the Zone is to slow disease spread, neither the State Board of Forestry nor CDF has the authority to impose and enforce a quarantine on the movement of infected material.

CDF, the Forest Service, and Forest Genetics Institute have expressed concern that not only other maritime pines, but also other native pines in the Coast Range, Cascade Range, and the Sierra Nevada may become diseased. The fungus was confirmed on a Bishop pine in Mendocino County in November of 1992 and has since been confirmed on Monterey pine in Ukiah (in Mendocino County) and Santa Rosa (Sonoma County). While redwoods have shown resistance in greenhouse tests, Torrey pine (from San Diego County), Ponderosa pine and even Douglas fir alarmingly demonstrated susceptibility in these tests. Certain genotypes of other more widely distributed tree species are also threatened by the pitch canker pathogen. For example the limited coastal populations of ponderosa pine, knobcone pine and Douglas-fir in Santa Cruz County are at risk due to their close proximity to infected off-site plantings of Monterey pine.

Although Monterey pine is by far the most commonly infected species, the pathogen has also been isolated from Aleppo pine, Bishop pine, Italian stone pine, Canary Island pine, Coulter pine, ponderosa pine, Digger pine, knobcone pine, shore pine, Torrey pine and Douglas-fir. The most recent new host records of the pathogen are all from planted trees in Santa Cruz County: shore pine at Sunset State Beach, Torrey pine at Seacliff State Beach, Digger pine in central Santa Cruz County, and knobcone pine and Douglas-fir in southern Santa Cruz County. Pitch canker has also been isolated from Aleppo pine Christmas trees in San Diego County, which was the first record of pitch canker in southern California on a tree species other than Monterey pine.

No cure for infected trees is currently available. Most estimates describe a mortality rate of up to 85%. Many thousands of trees are already dead. It is important to limit the spread of the fungus until an effective means to deal with it is discovered and disease-resistant stock can be made available. A small percentage of Monterey pine appears immune to the disease. However, of the causative species fungus (*Fusarium subglutinans* f. ssp. *pini*), only 5 strains are currently present in California; one of these makes up 70% of the California population of the fungus and an even higher proportion of the population present in the native Monterey pine stands in central California. Individual specimens which exhibit resistance to the one overwhelmingly prevalent strain might prove vulnerable to yet other strains that may become more



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widespread someday. As a result, the development of a one or only a few lineages of disease resistant stock is not likely to be sufficient to ward off the pitch canker threat.

Because the native range for Monterey pine is limited only to the Año Nuevo stand and three other isolated places on the globe, the main hope for the survival of the Monterey pine worldwide is that there will be enough natural diversity within the native stands so that at least some trees will have genetic disease resistance or tolerance, that these trees can be used to propagate new trees for urban repopulation, and that larger tracts of native pine forest can be preserved and managed so that natural regeneration can take place to repopulate native pine forest habitat. As such, the native pine stands in Año Nuevo area represent both a global resource for forest management and breeding programs to develop disease-resistant stock and forest, and a natural preserve of this sensitive species.

Indeed, until the nature of existing native pine forest immunity is understood, it is critical that the maximum genetic diversity within the native stands of Monterey pine be protected. CDF concludes:

The restricted native ranges of Monterey pine, Torrey pine, and Bishop pine heightens concern for the effect of pitch canker on these populations. Monterey pine is the most widely planted timber species in the world, and California's native populations represent a global resource for breeding programs. Pitch canker has the potential to reduce the genetic diversity of these species and the integrity of their native stands.

Finally, because of the various threats to the species, native Monterey pine has been listed as a Federal Species of Concern and a California Native Plant Society List 1B species ("Plants Rare, Threatened, or Endangered in California and elsewhere"); List 1B species are specifically eligible for state listing. Although temporarily withdrawn in December 1999 to allow CDFG to respond to the volume of information submitted, the California Native Plant Society submitted a petition in August 1999 to list Monterey pine as a Threatened Species under the California Endangered Species Act. As described above, native Monterey pine forest is defined as ESHA in the certified LCP.

Impacts to the Pine Resource

The subject parcel is located within and at the perimeter of a much larger contiguous indigenous Monterey pine forest immediately to the east of the property. This tree canopy extends exclusively along the eastern property line of the site and is the outlying edge of a larger forested area extending along the steep arroyo of Año Nuevo Creek located east and north of the subject site. This Año Nuevo forest area, extending from the coast to approximately 1000 feet inland of the subject site, is one of four places on the globe where native pine remain. Just north of the Applicant's property is the northernmost extent of the native Año Nuevo stand. The native pine forest here is differentiated from the other 3 native pine forests by the fact that it is part of a much more mixed forest (including specimens of douglas fir, redwood, madrone, etc.). In contrast, the main Monterey Peninsula stand is almost entirely made up of pine. In contrast again to the main Monterey Peninsula stand, and to a lesser degree the Cambrian stand, that have been severely reduced in size due to development, the indigenous Monterey pine forest here at Año Nuevo has remained virtually intact in recent years. As such, any development proposal that may impact this resource demands careful scrutiny. Please see Exhibit J for the most recent mapping, including past historic estimates, of the



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Año Nuevo Monterey pine stand done for CDFG in 1994.¹⁶

The proposed residence would be sited along the edge of the existing forest within a scattered outlying grove of Monterey pine – some living, some infected with pitch canker – and other trees. Although the County indicated that the only pine that would be removed for the proposed project would be several small pine saplings, the Applicant's plans indicate that no living pine would be removed. This is verified by the Applicant's consulting forester. The consulting forester also indicates that there are only a few dead and/or infected pine in the immediate area where the residence would be constructed. The Applicant's consulting forester opines that the proposed residential site should not be considered part of the pine forest.

The LCP recognizes the indigenous Monterey pine forest here as ESHA (LCP Policies 5.1.2, 5.1.3, IP Section 16.32.040). The Applicant's proposal, though, has interpreted this to mean individual pine tree specimens, rather than the larger forest resource that constitutes the sensitive habitat resource. Although individual native pine are important to protect, individual specimens need to be understood within the ecological context that makes up their habitat. Thus, Monterey pine forest needs to be understood as a complete and dynamic habitat – understory and overstory, animals and interactions, soils and climates. A forest is in fact a complex, interdependent web of living organisms rather than just a collective noun for a group of trees in the landscaping sense. At issue is preservation of habitat, not simply mitigation of individual tree impacts. It is to the *forest* that the LCP refers (LCP Policy 5.1.2).

The eastern portion of the subject site that is characterized by Monterey pine forest, and the land within this outlying boundary – including the proposed building pad – constitutes Monterey pine forest habitat. CDFG concurs and indicates that this area should be considered part of the native Año Nuevo Monterey pine stand. The County's staff report on this project likewise agrees stating that "the proposed building site is located within the Monterey pine forest area." In the absence of development on this more steeply sloping portion of the subject site, Monterey pine would be expected to expand and grow in this current clearing in this forest area. In fact, the forester's report indicates that such regeneration is occurring currently nearby with approximately 20 healthy pine saplings growing just west of the proposed house site. In other words, the sensitive species is using the sensitive species habitat here.

In fact, it is likely that historically, before the site was cleared for agricultural purposes in the last century, that the entire site was part of the larger Año Nuevo pine forest. This larger native forest currently occupies approximately 1,500 acres, and recent published mapping of its current and historic extent bear this out.¹⁷ The site is located within the appropriate climatic range, and is bracketed both inland and seaward by existing pine forested areas.¹⁸ In the absence of human intervention, the entire site would likely convert to indigenous pine forest indicative of the Año Nuevo stand. At the least, the southeastern half of the property appears to provide habitat for native pine as evidenced by the healthy pine saplings growing between the northeastern and southwestern property lines and the associated forested areas at

¹⁶ *Monterey Pine Forest Ecological Assessment: Historical Distribution, Ecology, and Current Status of the Monterey Pine* by Jones and Stokes for CDFG, dated September 12, 1994.

¹⁷ *Ibid*; Jones and Stokes for CDFG (December 1996 and September 1994).

¹⁸ There are also interspersed agricultural clearings seaward of the site that were likely part of the historical Monterey pine range here.



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those property lines. In other words, the forest appears to be regenerating across the subject site as of today. See Exhibit J for the most recent mapping of the Año Nuevo pine forest.

Similar to Coastal Act Section 30240, the Santa Cruz County LCP does not allow non-resource dependent development within ESHA. Residential development within the proposed location would not be dependent on the resource and does not meet any of the other LCP Policy 5.1.3 tests. Moreover, residential development here would not “maintain or enhance the functional capacity of the habitat” as required by LCP Policy 5.1.6. In fact, such development would remove habitat from its primary function. LCP Section 16.32.090(c)(A)(1) does not include residential uses as either a permitted or discretionary use within essential habitats. In addition, residential development brings with it fire suppression concerns and requirements (such as defensible clear space around the house). In fact, the Applicant proposes a 30 foot uphill and 60 foot downhill “defensible” space within which it is not entirely clear what trees and/or understory vegetation may need to be removed. It seems likely that these fire suppression concerns and/or requirements would lead to future removal of indigenous Monterey pine forest at this site. This is all the more possible since the County did not otherwise protect these resources through a legal instrument as required by LCP Policy 5.1.7(c) and Zoning Section 136.32.090(b)(2).

Furthermore, as described above, prescribed and natural burns within such Monterey pine forests can be extremely important for the continued vitality of the forest resource. Residential development within and adjacent to the forest resource presents a conflict with pursuing such management techniques due to concerns for residential structures. The LCP requires that development within or adjacent to indigenous Monterey pine forest be accompanied by a property restriction allowing for the development and implementation of prescribed burn programs; this property restriction was not a part of the approved project as required by LCP Section 16.32.090(c)(C)(1).

Finally, LCP Section 16.32.090(c)(C)(1) requires that residential development within or adjacent to indigenous Monterey pine forest shall not exceed $\frac{1}{4}$ acre or 25% of the parcel, whichever is less. The proposed residential compound and the proposed access driveway are proposed both adjacent to and within Monterey pine habitat. Since the subject parcel is approximately 50 acres, the LCP limits site disturbance in this case to $\frac{1}{4}$ acre (or 10, 890 square feet). The proposed residential compound (house, garage, pool, paths, and courtyard) would occupy roughly 16,000 square feet, the surrounding ornamentally landscaped terraces another roughly 25,000 square feet, associated grading areas below the terraces another roughly 35,000 square feet, the septic system area over 3,000 square feet, and the driveway over 18,000 square feet. All told, approximately 100,000 square feet of site disturbance (see table below). This is nearly ten times the LCP’s maximum allowable area of disturbance at this location.



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Proposed Site Disturbance¹⁹	
House structures (house, garage, pool, paths, and courtyard)	15,580 square feet
Terraced areas (landscaped terraces surrounding house)	25,411 square feet
Graded areas (fill slopes below terraces)	35,459 square feet
Septic Field	3,192 square feet
Driveway ²⁰	18,240 square feet
Total Site Disturbance Proposed	97,882 square feet

Monterey Pine Conclusion

Native Monterey pine forest is found in just four places in the world, including the larger forest area of which a portion is located on the subject site. The subject indigenous pine stand is the least disturbed of the 3 California locales; and though less is known about the Mexican island stands, probably the least disturbed of all the indigenous pine stands in the world. The very existence of pine is threatened by pitch canker. The survival of the genetic diversity of the species is dependent in part on maintaining the four native groves. The subject development is sited within indigenous Monterey pine forest habitat that is defined as ESHA by the LCP. The proposed residence is not dependent on siting within the ESHA and does not meet any of the other LCP tests for allowing development within ESHA. The proposed project would significantly disrupt the continuation of the habitat values within the ESHA contrary to the LCP. The proposed site disturbance is almost ten times that maximum allowed by the LCP. The project does not include a property restriction allowing for prescribed burns as required by the LCP, nor does it include any binding legal instrument to protect the Monterey pine ESHA as required by LCP. As such, the Commission finds that the project, as proposed, is not consistent with LCP ESHA policies protecting the native Monterey pine forest habitat at this site.

4. ESHA Conclusion and Parameters for Project Modification

LCP ESHA policies generally mimic Coastal Act Section 30240 and require that ESHA be avoided and that development not significantly disrupt ongoing ESHA resources. In this case, the proposed project site is entirely occupied by ESHA: native Monterey pine forest at the higher elevations on the northeast of the property and San Francisco garter snake and California red-legged frog on the remainder of the property. The project as proposed would be placed within Monterey pine forest ESHA (for the residential compound), within San Francisco garter snake and California red-legged frog ESHA (for the access driveway), and would bring increased traffic, noise, lights, and residential activities into garter snake and frog habitat to the further detriment of habitat and migratory corridors for these listed species. The proposed site disturbance is nearly ten times that maximum allowed by the LCP. The project, as proposed,

¹⁹ As calculated from proposed project plans titled *Año Nuevo House* by Kirk E. Petersen and Associates Architects last dated revised December 28, 1999; dated received in the Commission's Central Coast District Office January 14, 2000).

²⁰ For that portion of the proposed driveway not already counted in either the house structures, terraced areas, or graded areas. Such subset of the proposed driveway is roughly 1,100 linear feet with one 40' turnout. Note that the proposed driveway runs approximately 1,350 total linear feet with a 12' wide paved roadway and 2' shoulders on either side.



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does not include the requisite deed restrictions or easements over ESHA resources, does not include a property restriction allowing for prescribed burns, and does not meet any of the other LCP tests for allowing development within ESHA. Under the LCP, the ESHA resources on this site are “essential habitats” by definition (LCP Section 16.32.040) within which the residential use is not a permitted or discretionary use per LCP Section 16.32.090(c)(A)(1). As such, the Commission finds that the project, as proposed, is not consistent with the LCP’s ESHA policies cited in this finding.

In order to find the project consistent with the ESHA policies, the project must be modified (see also “Project Modifications to Result in an Approvable Project” on page 55). Because the site is all ESHA, the best use for the subject property is probably as an open space habitat area managed to preserve environmentally sensitive habitat areas. This would be the most consistent use for development within LCP-defined essential habitat. If, however, a residence must be entertained at this location in light of constitutional takings considerations, the LCP provides guidance. In such cases, LCP Policy 5.1.3 allows development within ESHA provided it is otherwise consistent with the sensitive habitat policies, it is the least environmentally damaging alternative, all adverse impacts are completely mitigated, and it serves a purpose beneficial to the public. LCP Policy 5.1.6 dictates that redesign and reduction in scale is necessary if development within sensitive habitat must be entertained to allow for a “reasonable use of the land;” for development within or adjacent to the forest, the LCP site disturbance maximum is ¼ acre. LCP Policy 5.1.7 requires structures be placed as far away from habitat as possible, prohibits domestic animals, limits removal of native materials, prohibits landscaping with exotics, and requires deed restrictions or easements over the undisturbed habitat portions of the site. Special construction timing measures to avoid San Francisco garter snake and California red-legged frog will be necessary. Finally, because the residence would have to be located within ESHA deemed by the LCP essential habitat, a variance would be required to allow for a residence here.

In sum, to achieve consistency with the LCP’s ESHA policies in light of constitutional takings issues, the project must be reduced in scope from that proposed, and redesigned as necessary to best avoid the significant disruption to sensitive habitat that would accompany any development of this property. If, during the course of such a planning exercise, there is a conflict between protecting native pine forest versus protecting San Francisco garter snake and California red-legged frog habitat, the snake and frog habitat should take precedence given the rarity, importance and formal listing status of these species. This is consistent with the LCP’s direction to look to Coastal Act policies, policies that absolutely protect ESHA, when there is a question of interpretation.²¹ Likewise, this snake and frog habitat takes precedence over anything above “a reasonable economic use of the land.” Because of the formal Federal and State list status for these species, USFWS and CDFG will need to be consulted. Since it is unlikely that ‘take’ of listed species can be altogether avoided should residential development occur here, it is likely that a Habitat Conservation Plan will be required by USFWS and/or a formal Biological Opinion required by CDFG to satisfy Federal and State Endangered Species Act requirements before construction could commence at this site.

²¹ LUP Chapter 1, Interpretation.



C. Land Use – Agriculture

1. Applicable Policies

LCP agricultural land use policies specifically applicable to the subject site include:

LUP Policy 2.22.1 Priority of Uses within the Coastal Zone. Maintain a hierarchy of land use priorities within the Coastal Zone:

First Priority: Agriculture and coastal-dependent industry

Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Policy 2.22.2 Maintaining Priority Uses. Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.

LUP Objective 5.13 Commercial Agricultural Land. To maintain for exclusive agricultural use those lands identified on the County Agricultural Resources Map as best suited to the commercial production of food, fiber, and ornamental crops and livestock and to prevent conversion of commercial agricultural land to non-agricultural uses. To recognize that agriculture is a priority land use and to resolve policy conflicts in favor of preserving and promoting agriculture on designated commercial agricultural lands.

LUP 5.13.5 Principal Permitted Uses on Commercial Agricultural (CA) Zoned Land. Maintain a Commercial Agricultural (CA) Zone District for application to commercial agricultural lands that are intended to be maintained exclusively for long-term commercial agricultural use. Allow principal permitted uses in the CA Zone District to include only agricultural pursuits for the commercial cultivation of plant crops, including food, flower, and fiber crops and raising of animals including grazing and livestock production.

LUP 5.13.6 Conditional Uses on Commercial Agricultural (CA) Zoned Lands. All conditional uses shall be subject to standards which specify siting and development criteria; including size, location and density. Allow conditional uses on CA zoned lands based upon the following conditions: (a) The use constitutes the principal agricultural use of the parcel; or (b) The use is ancillary incidental, or accessory to the principal agricultural use of the parcel; or (c) The use consists of an interim public use which does not impair long term agricultural viability; and (d) The use is sited to avoid conflicts with principal agricultural activities in the area; and (e) The use is sited to avoid, where possible, or otherwise minimize the removal of land from agricultural production.

LUP 5.13.7 Agriculturally Oriented Structures. Allow only agriculturally oriented structures or dwellings on Commercial Agricultural Land; prohibit non-agricultural residential land use when in conflict with the fundamental objective of preserving agriculture.



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LUP 5.13.28 Residential Uses on Commercial Agricultural Land. Issue residential building permits pursuant to policy 5.13.32 in areas designated as commercial agricultural land, only upon documentation that: (a) The residential use will be ancillary to commercial agricultural use of the parcel (See criteria in policy 5.13.29); or (b) The parcel is less than one net acre in size or has physical constraints other than size which preclude commercial agricultural use. In either case, residential development shall be allowed only if the residential use does not conflict with on-site or adjacent agricultural activities and the building site has approved agricultural buffer setbacks.

LUP 5.13.29 Residential Use Ancillary to Commercial Agriculture. Utilize the following criteria for determining when a residential use would be ancillary to commercial agriculture:

- (a) Documentation that the farmable portion of the subject parcel, exclusive of the building site, is large enough in itself to constitute a minimum economic farm unit for three crops other than greenhouses suited to the soils, topography, and climate of the area; or
- (b) Documentation that the owners have a long-term binding arrangement for commercial agricultural use of the remainder of the parcel by another party; and
- (c) Documentation that, concurrent with each of the above, the structure is sited in such a manner so as to minimize possible conflicts with commercial agriculture in the area, and to remove no land from production (or potential production) if any unfarmable potential building site is available, or if this is not possible, to remove as little land as possible from production.

IP Section 13.10.311(a) Purposes of Agricultural Districts, “CA” Commercial Agriculture. The purposes of the “CA” Commercial Agriculture Zone District are to preserve the commercial agricultural lands within Santa Cruz County which are a limited and irreplaceable natural resource, to maintain the economic integrity of the economic farm units comprising the commercial agricultural areas of the County, to implement the agricultural preservation policy of Section 16.50.010 of the Santa Cruz County Code, and to maintain and enhance the general welfare of the county as a whole by preserving and protecting agriculture, one of the County’s major industries. Within the “CA” Commercial Agriculture Zone District, commercial agriculture shall be encouraged to the exclusion of other land uses which may conflict with it.

IP Section 13.10.314 (Required Special Findings for “CA” and “AP” Uses.

- (a) All Uses. For parcels within the “CA” Commercial Agriculture and “AP” Agricultural Preserve Zone Districts, the following special findings must be made in addition to the findings required by Chapter 18.10 in order to approve any discretionary use listed under Section 13.10.312 which requires a Level V or higher Approval except Agricultural Buffer Determinations:

1. That the establishment or maintenance of this use will enhance or support the continued operation of commercial agriculture on the parcel and will not reduce, restrict or adversely affect agricultural resources, or the economic viability of commercial



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operations, of the area.

- 2. That the use or structure is ancillary, incidental or accessory to the principal agricultural use of the parcel or that no other agricultural use is feasible for the parcel.*
- 3. That single-family residential uses will be sited to minimize conflicts, and that all other uses will not conflict with commercial agricultural activities on site, where applicable, or in the area.*
- 4. That the use will be sited to remove no land from production (or potential production) if any nonfarmable potential building site is available, or if this is not possible, to remove as little land as possible from production.*

(b) Residential Uses in the Coastal Zone. For parcels within the “CA” Commercial Agricultural and “AP” Agricultural Preserve Zone Districts in the Coastal Zone, the following special findings shall be made in addition to those required by Chapter 18.10 and paragraph (a) above in order to approve any discretionary residential use including a single family residence, a permanent caretaker’s residence, or habitable accessory structure. These findings shall be based upon a review and determination by the Agricultural Policy Advisory Commission.

- 1. That the parcel is less than one acre in size; or that the parcel has physical constraints (such adverse topographic, geologic, hydrologic or vegetative conditions) other than size which preclude commercial agricultural use; or that the residential use will be ancillary to commercial agricultural use of the parcel based upon the fact that either:
 - (i) The farmable portion of the parcel, exclusive of the building site, is large enough in itself to constitute a minimum economic farm unit for three crops, other than greenhouses, suited to the soils, topography and climate of the area; or*
 - (ii) The owners of the subject parcel have a long-term binding agreement for commercial agricultural use of the remainder of the parcel, such as an agricultural easement.**
- 2. That the residential use will meet all the requirements of Section 16.50.095 pertaining to agricultural buffer setbacks.*
- 3. That the owners of the parcel have executed binding hold-harmless covenants with the owners and agricultural operators of adjacent agricultural parcels. Such covenants shall run with the land and shall be recorded prior to issuance of the Development permit.*

2. County-Approved Project

As described earlier, the subject site was originally part of the larger Steele Ranch that at one time



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encompassed roughly 7,000 acres dedicated primarily to dairy operations. The properties were subdivided in the 1950s creating the subject parcel and its neighboring properties. Historic grazing on this parcel has long since ceased and the land has been fallow for some time. As seen in the ESHA finding above, the entire site is now habitat for native Monterey pine, San Francisco garter snake, and California red-legged frog. So while consistency with the LCP's agricultural policies is analyzed below, it should be understood as basic background for this site, and it should be further understood that these agricultural policies may be superceded by ESHA considerations consistent with the LCP's direction to look to Coastal Act policies, policies that absolutely protect ESHA, when there is a question of interpretation.²²

Residential development is a conditional, discretionary use in the subject CA zone district applicable to the parcel. Specific findings to allow such a use must be made pursuant to LCP Section 13.10.314. In this case, the County found that: siting the proposed residence within the Monterey pine forest would keep the residence away from farmable portions of the property; that the residence would not preclude the potential for renewed agricultural use at the property; and that the residence would lie a sufficient distance (300 feet) from adjacent agriculturally designated lands to adequately protect from potential land use conflicts. The project exceeds the agricultural buffer setback requirements of LCP Section 16.50.095 (200 feet) and the local permit has been conditioned to require the property owner to sign and record an acknowledgment of adjacent agricultural land uses and a hold harmless agreement to be recorded on the property deed. The County found the proposed residence to be ancillary to any agricultural use since the farmable portion of the parcel (20 to 40 acres) would still be large enough to constitute a minimum economic farm unit capable of supporting livestock grazing. The County found that the dwelling would cover approximately one acre, or about 2% of the gross parcel area.

The County found that the property has value for renewed agricultural production. Specifically, the property could support a small herd of dairy cattle or goats or other livestock in the large meadow area, or, in the alternative, crops such as cut flowers, ollalie berries, kiwi fruit, pumpkins, squash, or Christmas trees could be cultivated. Overall, the parcel is large enough to constitute an economic farm unit for several crops and the County has found the presence of prime agricultural soils here.

3. Consistency with Applicable LCP Policies

The LCP is extremely protective of agricultural lands and is reflective of the policies of the Coastal Act by its encouragement of agricultural uses to the exclusion of other land uses that may conflict with them. In short, the policies of the LCP acknowledge that coastal agricultural lands are an irreplaceable natural resource and the protection of their economic integrity as economic farm units is vital. In order to accomplish this, the LCP sets forth a number of requirements. These include, but are not limited to, defining allowable agricultural uses (including allowed support and related facilities), principal and conditional uses, development standards, and easement requirements. In addition to the general requirements of the CA Commercial Agriculture District, the LCP requires that special findings be made to allow a conditional, discretionary residential use on a CA-zoned property.

LCP Section 13.10.314 sets forth four general tests that must be met before a use can be allowed in the CA

²² LUP Chapter 1, Interpretation.



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district. In sum, these are: (1) that maintenance of the use will enhance or support agriculture, and will not reduce, restrict or adversely affect agricultural operations in the area, (2) that the use is ancillary, incidental or accessory to agricultural use of the parcel or no other agricultural use is feasible, (3) that single family residential uses will be sited to minimize conflicts, and (4) that the use will not remove land from production (or potential production) or will remove as little land as possible from production.

LCP Section 13.10.314 also requires that special findings be made to allow a residential use here. These requirements are in light of the conditional, discretionary nature of the residential use on these CA lands. These requirements restrict residential uses upon CA parcels to parcels: (1) that are less than one acre in size, (2) that are so physically constrained (other than overall size) that they preclude commercial agricultural use, or (3) where the residential use would be ancillary to commercial agricultural use of the parcel because either (a) the farmable portion of the property constitutes a minimum economic farm unit without the building site or (b) there is a binding agreement for continued commercial agricultural use of the remainder of the site. In any case, the residential use must, in addition to other requirements of the LCP, adhere to the agricultural buffer setbacks of LCP Section 16.50.095 and execute a hold harmless covenant with the owners and agricultural operators of adjacent agricultural parcels.

The general incompatibility of residential and agricultural land uses is highlighted by the fact that the proposed project is a conditional, discretionary use at this site. As such, the allowance of the proposed use is not a right under the LCP and is subject to discretionary review for consideration. Reasons for this conditional use designation are rooted in the inherent incompatibility of these two land uses. Typical incompatibility issues raised at urban-agricultural land use interface include: noise, dust, and odors from agricultural operations; trespass and trash accumulation on agriculture lands; road-access conflicts between agriculturally related machinery and automobiles; limitations of pesticide application, urban garden pest transfer, theft, vandalism; and human encroachment from urban lands to name a few. Such incompatibilities can threaten continued agricultural cultivation when its proximity to non-agricultural uses (such as residential) raises issues and/or concerns that standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as dust and noise from machine operations – cultivating, spraying, harvesting, et al) are a threat to the non-agricultural uses.

In sum, the LCP requires that the proposed residential use be incidental to the agricultural use of the site, and that it not restrict, reduce, or otherwise adversely affect continued or renewed agricultural production.

The County findings pursuant to LCP Section 13.10.314 were based primarily upon the proposed residence's location outside of the most agriculturally viable portions of the property. In other words, because the residence would be placed on the higher elevations within the Monterey pine forest, the residence would not adversely impact the prime agricultural area running north to south along the western portion of the property.

Although such siting raises other forest resource concerns as detailed in the findings above, the Commission can concur that the proposed building site would stay out of the most agriculturally viable



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portion of the site as indicated by the County, and as required by LCP Section 13.10.214.²³ As such, the project generally satisfies the first portion of the Section 13.10.314 test (namely that agricultural use, in this case future agricultural use of the property, not be adversely affected). However, the project raises fundamental questions whether such an enormous residential structure can be considered “ancillary, incidental, or accessory” to commercial agricultural use of the property as also required by LCP Section 13.10.214. As mentioned, the proposed residential compound and related structures would occupy over two acres of the parcel. The applicant proposes to construct a 3 story, 51 foot tall, 15 room single-family dwelling, with a basement, 3-car connected garage (with a room above), swimming pool and assorted pathways, courtyards, and retaining walls. In total, approximately 15,000 gross square feet of structures would be developed. In this case, it is doubtful that the proposed 15,000 square foot house and pool are ancillary, incidental, or accessory (Section 13.10.314(a)(2) and (b)(1)) to agriculture. Though a somewhat subjective test, the proposed dwelling stretches the limit of interpretation to find that it is a “agriculturally oriented dwelling” as required by LCP Policy 5.13.7. The proposed house would be considered a very large farm house if it were even one-third the proposed size. When compared with other Santa Cruz agricultural properties, the proposed structural development is far larger than other residences constructed as ancillary facilities on agricultural lands. Although a survey would be necessary to confirm, anecdotal evidence suggests that it would be the largest such agricultural residence in Santa Cruz County, and one of the largest residences in the County overall.

The applicable LCP test for “ancillary” in this case is that the farmable portion of the property, exclusive of the building site, would constitute a minimum economic farm unit for three crops, other than greenhouses (LCP Section 13.10.314(b)(1)(i)). The LCP defines “minimum economic farm unit” as follows:

An area of farmland of sufficient size to provide a return to land and capital investment or a return to cover costs of a new investment

In this case, the County has indicated that even with the residential development, the large meadow area portion of the property could support a small grazing herd, or that it could support commercial agricultural crops such as cut flowers, ollalie berries, kiwi fruit, pumpkins, squash, or even Christmas trees. Although the soils are not ideal, irrigation and good management practices would make such operations economically feasible. In terms of agricultural issues alone (i.e., suspending discussion of ESHA ramifications), the Commission can concur that this is the case. Since the proposed project meets this test, LCP Section 13.10.314(b)(1)(i) specifies that the subject residential use is in fact ancillary to agricultural use of the parcel’s remainder. So while the Commission must observe that such a finding that this enormous residential development is “ancillary” to agricultural use stretches the limit of LCP intent and interpretation, it is within the parameters of the applicable LCP policies to find it so. As is the “agriculturally oriented dwelling” requirement of LCP Policy 5.13.7. It is still, however, a discretionary use for which some discretion is allowed.

In addition, although the County findings state that the, “permit has been conditioned to require that the

²³ The most agriculturally viable portion of the site is also the portion of the site that is listed species habitat (for San Francisco garter snakes and California red-legged frog); see agricultural finding conclusion.



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property owners sign and record an Acknowledgement of adjacent agricultural land and a hold harmless agreement on the subject parcel's property deed restriction," the County's condition only requires "a statement acknowledging the adjacent agricultural land use and the agricultural buffer setbacks." The Commission's experience has been that the precise wording of such an acknowledgment is critical to ensuring that future issues do not arise that would threaten ongoing normal agricultural operations on adjacent properties. It may be that the County's condition is sufficient in this regard. This would be the case if it invoked all of the parameters of LCP Section 16.50.090 detailing applicable deed restriction language for development adjacent to agricultural lands. While it can be assumed that the County would use Section 16.50.090 deed restriction language, this is not explicitly stated. Without knowing what the deed restriction would contain, it is difficult to say with certainty whether this LCP requirement is met in this case.

4. Land Use – Agriculture conclusion & Parameters for Project Modification

North coast agricultural lands are a finite resource for which the LCP demands the highest level of protection. Although construed narrowly, the LCP would allow for such a huge residential compound in the site proposed (were there not otherwise visual and ESHA issues as previously described), the enormity of the proposed development stretches the limits of the LCP for such a discretionary, conditional use at this location. It may be that the remainder of the site would constitute a "minimum economic farm unit," but it is more difficult to make the case that such a huge residential development is "ancillary, incidental, or accessory" to commercial agricultural use of the property. And while the Commission is in no way suggesting the types of residences that are appropriate for individuals engaged in agricultural activities, it is clear that the subject residence would be one of the largest, if not the largest, such residences on agricultural lands in Santa Cruz County. It raises a question as to whether the proposed residential compound qualifies as an "agriculturally oriented dwelling" as required by the LCP. Further, although the huge size of the development may be *allowed* based upon setback versus height tradeoffs prescribed in the LCP,²⁴ it remains a discretionary decision as to the scale and character of such an ancillary use on agricultural land.

Although the agricultural findings can be made, the large overall mass and scale of the proposed estate compound, particularly its enormous mass and scale as compared to ancillary residential uses on other agriculturally zoned properties, raises issues in terms of the proposed project's conformance with the LCP's agricultural land use policies. Moreover, LCP agriculture issues are additionally raised because the huge residential compound is proposed absent any agricultural operation on the site; because it is the lowest priority use within the LCP's use hierarchy; and because of the potential for cumulative impacts on north coast agriculture from the development of such large estates on CA-zoned lands. As such, the Commission finds that the project, as proposed, is not entirely consistent with the LCP's agricultural policies cited in this finding.

²⁴ The LCP does not contain an outright cap on the size of residential development in the CA district. In fact, although the maximum height for residential structures in the CA zoning district is 28 feet, LCP Section 13.10.323(e)(5) allows the height to be increased by one foot for every 5 feet of increased yard setback. Using the large size of the lot to increase the required yard setbacks, the Applicant was able to use this formula to pursue a 51 foot residence at this location without a variance. On very large lots, it is conceivable that the LCP might allow even taller residential structures.



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In order to find the project consistent strictly with the LCP's agricultural policies, the project must be modified (see also "Project Modifications to Result in an Approvable Project" on page 55). The residential compound proposed should be reduced in scale to more closely approximate the range of size and scale for north coast agricultural dwellings. The LCP-required "hold-harmless" language (LCP Section 16.50.090) must be accounted for because the site is surrounded on three sides by agriculturally-zoned properties. Were there not to be ESHA constraints, the subject agricultural use of the property, and the way in which the residence would support that use, would need to be more clearly defined. In this case, however, although agriculture is a high priority under the LCP (and the Coastal Act), given the sensitive ESHA resources at this location, avoidance and preservation of ESHA at this site, at the expense of agriculture, is more protective of coastal resources given both the absence of ongoing agriculture and the significant endangered species habitat present on the site as well as the site habitat's relation to the larger endangered species habitat of the greater Año Nuevo area.

D. Helicopter Use

Although it not technically a part of the application in front of the Commission, the Applicant has stated that he intends to commute via helicopter from the subject site. This possible use constitutes a potential future impact of the project. The use of a private helicopter in this manner also meets the definition of "development" found in the Coastal Act and the certified LCP because it would change the intensity of the use of the land and physically require the use of a portion of the site for landings, departures and parking of the helicopter. The site preparation for this area may include grading, the placement of lights and removal of vegetation. The use of helicopters for commuting also represents a change in the intensity of use because of the significant impacts on coastal resources that will occur individually and cumulatively with this use. These impacts on ESHAs and the scenic character of the north Santa Cruz and San Mateo coastline have been discussed in the preceding findings and are further detailed below.

The Commission notes that the State, and thus the Coastal Commission, is precluded from regulating certain aspects of helicopter operation. The Federal Aeronautics Administration (FAA) indicates that states may not make rules regarding in-flight operations of helicopters; the FAA is the sole regulatory authority in these operational and safety areas.²⁵ FAA counsel noted that the state does have authority to regulate outside the areas of federal preemption and suggested contacting the Cal Trans Aeronautic Division. Counsel for Cal Trans agreed that the state was preempted from regulating flight operations as described in Public Utility Code (PUC) Section 21240 as follows:

PUC Section 21240. This state recognizes the authority of the federal government to regulate the operation of aircraft and to control the use of the airways, and nothing in this act shall be construed to give the department the power to so regulate and control safety factors in the operation of aircraft or to control the use of the airways.

The statute goes on to provide for the regulation of aspects of aeronautics and land use that are not preempted by the FAA. For example, PUC Section 21662.4(a) clearly implies that local government can

²⁵ Phone conversation between Commission counsel and FAA counsel.



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regulate flight departures and landings for all aircraft other than that used for medical emergencies, law enforcement, fire fighting and the military. PUC Section 21662.4(a) states:

PUC Section 21662.4(a). Emergency aircraft flights for medical purposes by law enforcement, fire fighting, military and other persons who provide emergency flights for medical purposes are exempt from local ordinances adopted by a city or county or city and county, whether general law or chartered, that restrict flight departures and arrivals to particular hours of the day or night, that restrict the departure or arrival of aircraft based on the aircraft's noise level, or that restrict the operation of certain types of aircraft.

As will be discussed in following paragraphs, Santa Cruz County has a provision in the County General Plan that limits helicopter use to the emergency medical transport, law enforcement and commercial agricultural uses.

Finally, PUC Section 21401 states that the operation of aircraft is a privilege subject to the laws of the state:

Section 21401. Sovereignty in the space above the land and the waters of this state rests with the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of the state.

The operation of aircraft in such space is a privilege subject to the laws of this state.

Overall, while certain aspects of helicopter operation are governed by federal regulation, private helicopter commuting would qualify as development under the Coastal Act and the certified LCP, inasmuch as such use would constitute a change in intensity and use of land. The establishment of such a use would require a coastal development permit. Inasmuch as such a use may be an associated potential impact of the project, it is necessary to evaluate such use for consistency with the LCP.

1. Applicable Policies

Many of the LCP policies previously referenced in the findings above do not explicitly discuss commuter helicopter use, but apply to such uses in the sense that the LCP requires protection of the critical public viewshed here, requires protection of the unkempt open space/wilderness character of the north coast, and requires protection of sensitive species and sensitive habitats. To the extent that the comings and goings of a helicopter conflict with these policies, these policies apply to the potential commuter helicopter use that the Applicant has detailed to Commission staff. In addition, the County General Plan states as follows:

General Plan Policy 3.19.1 Heliports. *Restrict heliport construction and helicopter use, and permit these only in conjunction with emergency medical treatment, emergency law enforcement, and commercial agricultural purposes.*

General Plan Policy 3.19.1 is not an LCP Policy. However, Policy 3.19.1 applies to LCP consistency inasmuch as General Plan compliance is required in permit findings (Zoning Section 18.10.230(a)(3)) and for discretionary approvals in general (Zoning Section 13.01.130(a)); Chapters 18.10 and 13.01 of the



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Zoning Code are included in the LCP's Implementation Plan per Zoning Section 13.03.050(b)(2).

2. Consistency with Applicable LCP Policies

The commuter helicopter use proposed by the Applicant is in conflict with LCP policies protecting the unkempt wild character of this stretch of wilderness coastline. Although some amount of sporadic helicopter use along this stretch of the coast is expected (e.g., for emergency transport, law enforcement), any such noisy commuter helicopter use on a regular basis would not be compatible with the character of surrounding open space wilderness area – specifically with the ongoing wildlife and recreational programs at adjacent Año Nuevo State Reserve and Big Basin State Park. Multiple helicopter landings and takeoffs, such as that associated with a commuter helicopter use, are not consistent with the sense of serenity and open space that is evoked by the surrounding public wilderness areas, and would be detrimental to the public programs there. In particular, as described in findings above, Año Nuevo State Reserve is a resource of tremendous local, regional, statewide, and national significance. Such private commuter helicopter use would have a profound effect on this national treasure used by hundreds of thousands of coastal visitors and is inconsistent with the north coast's undeveloped character. As such, it is not “integrated with the character of the surrounding neighborhood or areas” (IP Section 13.20.130(b)(1)) and it is not “subordinate to the natural character of the site” (IP Section 13.20.130(c)(2)).

In addition, it is not clear where the Applicant intends to land and park his helicopter on the site, but since the entire site is ESHA, such landing and parking would be within ESHA; the relatively flatter portions of the property that may be pressed into such service are particularly important San Francisco garter snake and California Red-legged frog habitat areas. Such helicopter landings and takeoffs would be expected to significantly disrupt the listed species habitats, frightening away individual specimens as well as potentially crushing those unfortunate enough to be caught under the helicopter landing gear. Raptors and other types of birds would be expected to be frightened away as well. Such helicopter use meets none of the LCP tests for allowing such a use within ESHA (LCP Policy 5.1.3), is not an allowed permitted or discretionary use with ESHA (IP Section 16.32.090(c)(A)(1)), and does not protect against significant disruption to these habitat areas as required by the LCP (LCP Policy 5.1.6 and 5.1.7).

Finally, General Plan Policy 3.19.1 clearly indicates helicopter use is to be restricted to that associated with “emergency medical treatment, emergency law enforcement, and commercial agricultural purposes.”²⁶ The envisioned commuter use is not a category of helicopter use that is allowed in the County since it falls within none of the 3.19.1 use types.

3. Helicopter Conclusion and Parameters for Project Modification

Commuter helicopter use is not consistent with LCP policies protecting the character of the surrounding Año Nuevo area, is not consistent with LCP policies protecting San Francisco garter snake and California red-legged frog habitat, and is not an allowed category of helicopter use in the County. In addition, as properties along this critical stretch of mostly undeveloped San Mateo/Santa Cruz County coastline are

²⁶ As indicated above, the LCP requires General Plan conformance for project proposals.



pursued for large estate development (such as that proposed here), the cumulative impact should other large estate owners pursue commuter helicopter uses of their own would be substantial and ruinous to the ambiance of this special stretch of the Central Coast.²⁷ As such, the Commission finds that the commuter helicopter use envisioned by the Applicant is not consistent with the LCP policies cited in this finding. Therefore, Special Condition 5 prohibits any helicopter use associated with the project except for emergency purposes (see also “Project Modifications to Result in an Approvable Project” on page 55).

E. Cumulative and Growth Inducing Impacts

1. Applicable Policies

The LCP protects against impacts associated with individual projects such as this, as well as the cumulative impact from such projects in relation to current and potentially planned development. The LCP states:

***LUP Policy 2.1.4 Siting of New Development.** Locate new residential, commercial or industrial development, within, next to, or in close proximity to existing developed areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on environmental and natural resources, including coastal resources.*

2. County-Approved Project

The County found that the project itself, as conditioned, would not induce future growth by virtue of its CA zoning, location within a Least Disturbed Watershed, and location adjacent to larger TP zoned lands.

3. Consistency with Applicable LCP Policies

The LCP requires that development not individually, or cumulatively when considered in the context of other existing and reasonably foreseeable future development, significantly adversely affect coastal resources. As discussed in the findings above, the proposed project by itself results in adverse ESHA, visual, and agricultural land use impacts. Any such impacts would be exacerbated by similar projects that may take place in the foreseeable future both in the general Año Nuevo area as well as the larger north Santa Cruz County – south San Mateo County region that is largely undeveloped at present time.

The concern is that these large, mostly undeveloped and agricultural parcels, will be used in the future for a plethora of “monster” trophy homes. These large trophy homes, where visible, would redefine the character of the agrarian and wilderness landscape here. There is also the question of whether such large homes have relatively more resource impacts than smaller homes due to increased water consumption, increased waste water production, larger impervious surfaces, more traffic, et cetera generated by the increased level of upkeep necessary to maintain larger homes and grounds. Part of this is because larger

²⁷ See also cumulative impact findings that follow.



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estate homes and grounds can include more persons involved in day to day maintenance (such as maids, gardeners, pool persons, etc.); such has been the Commission's experience in such large home enclaves as Pebble Beach.

A. Other similar projects in the same general area

In fact, in addition to this subject application, there are currently two other such large residential projects on appeal to the Commission at this time in this general area: the appeal of the proposed Lee residence immediately to the west of the subject site (between the subject site and Highway One to the west) in San Mateo County (A-2-SMC-99-066), and the appeal of the proposed Blank residential compound at a portion of the former Cascade Ranch approximately ½ mile upcoast of the subject application (A-2-SMC-00-028). The proposed Lee residence includes a 6,500 square foot residence, approximately 8,000 square feet of outside hardscape living space, a driveway of roughly 9,600 square feet, and a pond and ornamental garden comprising an additional 18,500 square feet of area. The total site disturbance proposed is roughly 33,000 square feet. According to recent reports, the Lee site appears to be all or nearly all ESHA for San Francisco garter snake, California red-legged frog, and native Monterey pine forest.²⁸ The large pond on the subject site may be one of the oldest and most important red-legged frog habitats in the entire area.²⁹ The Lee site is also visible from Año Nuevo State Reserve and Highway One.

The proposed Blank residence is likewise a large compound that includes a 3-story, nearly 16,000 square foot residence connected by underground tunnels to outlying bedroom units, a 2,500 square foot equipment barn, a 3,200 square foot stable, a 1,250 square foot farm labor housing unit, a swimming pool occupying approximately 1,100 square feet, and driveway, parking and other hardscape covering another 8,000 square feet or so. A total of roughly an acre of such disturbance is proposed. Again, similar to the subject application, the Blank site is likewise occupied by significant areas of habitat for San Francisco garter snake and California red-legged frog, as well as other resources. This site, too, is visible from public viewing areas.

The Applicant has submitted a cumulative impact analysis for the immediately surrounding 19 private parcels³⁰ (see letter report from the Applicant dated received May 15, 2000, Exhibit L). This analysis concludes that, with the exception of the proposed Lee house, any future development on the remaining large privately held parcels would be limited by the zoning (CA and TP) and could be hidden from public view utilizing the topography and intervening vegetation here. Part of this analysis is supported by the following: (1) CA zoned land is limited to a maximum density of 40 acres per dwelling unit; (2) TP zoned land is limited to a maximum density of 40 acres per dwelling unit; (3) allowable land division for CA and TP zoned lands is limited; (4) properties located within Least Disturbed Watersheds (such as the subject site) require a minimum 40 acre parcel; and (5) residential development is a discretionary conditional use as opposed to a principal permitted use in these areas. However, the only current

²⁸ *A Determination of Habitat for the San Francisco Garter Snake and the California Red-legged Frog on the David Lee Property*, by Dr. Sam McGinnis, dated November 6, 2000.

²⁹ Dr. Sam McGinnis, *Ibid*.

³⁰ The vast majority of lands surrounding the subject site are in public ownership including Año Nuevo State Reserve and Big Basin Redwoods State Park; see page 2 of Exhibit H.



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applications in front of the Commission (i.e., Hinman, Blank and Lee) suggest more of a concern for cumulative impacts than does the Applicant's analysis. Each project, as proposed, is located within a critical public viewshed to varying degrees. Moreover, the Commission is aware of at least two residential applications involving similar north coast properties moving through County permitting processes: one located immediately upcoast of the Lee site (in San Mateo County) and a second further downcoast toward Santa Cruz involving another sprawling residential compound (roughly 11,000 square feet of structures) on agriculturally zoned land in the critical public viewshed west of Highway One (near Sand Hill bluff).

B. Potential for growth inducement

With regards to growth inducement, it is not likely that the subject residence would induce future growth in the immediately surrounding parcels. The project does not propose a new road, rather it relies on an existing road providing access to other residential structure tucked away at this location. There are not additional undeveloped properties that could be reached by the road here. The zoning and least disturbed watershed designation here precludes additional dwelling units and/or land division. The same can generally be said for the immediate surrounding area. In any case, any such future development proposals would be subject to the same policies as this proposal, dictating avoidance of sensitive habitats and public viewsheds, and preservation of agricultural lands.

It is possible that the Commission's approval of a large dwelling here could induce similar future development proposals by virtue of the perception that such development was deemed appropriate by the Commission, but this growth inducing "impact" would be very difficult to distinguish with any certainty. Notwithstanding this, as described above, very similar projects are already on appeal to the Commission and/or moving through the County process from which additional appeals are likely.

4. Cumulative Impact Conclusion and Parameters for Project Modification

The largely undeveloped north Santa Cruz County – south San Mateo County region is a critical coastal resource area. Maintaining the agrarian and wooded rural countryside between Half Moon Bay and the City of Santa Cruz is of utmost County and State importance. The LCP protects this resource through the ESHA, visual, and land use policies described in the previous findings; it also protects against potential cumulative, growth-inducing types of effects pursuant to LCP Policy 2.1.4. The proposed project as approved by the County may induce a similar type of future growth in this area to the extent such an approval sets precedence for the LCP policy interpretation that residential structures may be visible within the critical viewshed when other hidden siting options exist; that such huge mansions are "accessory" and "agriculturally oriented" residential units on agriculturally zoned lands; and that houses can be placed in ESHA. Such potential future development would have similar impacts as those attributable to the proposed project as discussed in these findings; these impacts would be significant both on an individual and cumulative basis. In addition, while not a part of the project before the Commission, the Applicant indicates that he plans on commuting to and from the subject site via helicopter. Such commuter helicopter use, particularly if emulated in other similar projects, would have a significant



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negative cumulative effect on the wilderness character of the largely undeveloped coastline here.³¹ For all these reasons, the proposed project raises questions of consistency with the LCP's cumulative and growth inducing impacts policies cited in this finding.

In order to find the project consistent with the LCP's cumulative impact policies, the project must be modified (see also "Project Modifications to Result in an Approvable Project" directly below). In this case, there are complementary LCP policies which combine to direct project modifications that reduce the scale of the proposed project, avoid and preserve ESHA, and keep such development outside of the critical public viewshed. Commuter helicopter use needs to be avoided. Such modifications for this project, and to the extent they are similarly applied to other similar proposed projects along this sensitive stretch of coastline, will ensure that the cumulative effect of individual developments along the largely undeveloped north Santa Cruz County – south San Mateo County coast will not alter the existing open-space agrarian wilderness character of this critical coastal resource region.

F. Project Modifications to Result in an Approvable Project

The proposed project would place an enormous residential estate on a agriculturally zoned property in the critical public viewshed surrounding the Año Nuevo State Reserve along a stretch of mostly undeveloped San Mateo County – Santa Cruz County coastline to the detriment of ESHA, visual, and agricultural resources protected by the LCP. The project raises significant issues with respect to the proposed project's conformance with the LCP's visual, ESHA, and agricultural land use policies; all of these issues are exacerbated by their potential for cumulative impacts in the future. Project modifications are necessary if a project is to be approved at this location

1. Parameters for Project Modification

The subject site presents a challenging planning conundrum for residential siting in that the roughly 50 acre parcel is zoned for high priority agriculture, is located in a critical public viewshed, and is completely occupied by ESHA. ESHA on the site includes native Monterey pine forest, wetland, native grassland, and habitat and migration corridors for both San Francisco garter snake (a Federal and State Endangered Species) and California red-legged frog (a Federal Threatened Species and a State Species of Special Concern). The relatively steeper portions of the site are further constrained by areas of geologic instability.

As described in each of the preceding findings, there are certain project modifications necessary within each issue area for the project to be found consistent with the LCP. First and foremost, because the site is all ESHA, the best use for the subject property is probably as an open space habitat area managed to preserve environmentally sensitive habitat areas. This would be the most consistent use for development within LCP-defined essential habitat. If, however, a residence must be entertained at this location in light of constitutional takings considerations, the LCP provides guidance. Paramount to LCP compliance in the face of such an ESHA-constrained property is to avoid the most sensitive ESHA on the site, and to

³¹ The use of a commuter helicopter at this location raises a host of coastal resource issues. See also visual compatibility and ESHA findings, and see also separate helicopter finding.



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redesign and reduce in scale the development in such a manner as to limit ESHA impacts as much as possible. If, during the course of such a planning exercise, there is a conflict between protecting native pine forest versus protecting San Francisco garter snake and California red-legged frog habitat, the snake and frog habitat should take precedence given the rarity, importance and formal listing status of these species. Likewise, this snake and frog habitat takes precedence over anything above “a reasonable economic use of the land.” Such an ESHA approach can be complementary to the need to keep the residential development outside of the public viewshed. Finally, although coastal agriculture is a high priority under the LCP (and the Coastal Act), avoidance and preservation of ESHA at this site, at the expense of agriculture, is more protective of coastal resources given both the absence of ongoing agriculture and the significant endangered species habitat present on the site as well as the site habitat’s relation to the larger endangered species habitat of the greater Año Nuevo area. This is consistent with the LCP’s direction to look to Coastal Act policies, policies that absolutely protect ESHA, when there is a question of interpretation.³²

A. LCP ESHA parameters

Since the whole site is ESHA, an LCP-approvable project (in light of constitutional takings issues) and consistent with LCP policies in place an applicable to this property since 1982 (LUP certification) need only be for a “reasonable economic use of the land” (LCP Policy 5.1.3 and 5.1.6). This term is not defined in the LCP, but a reasonable use of the land would be something akin to other agricultural residences on similarly sized agricultural north coast properties. Absent a comprehensive survey of same, it is not clear what the range of size and scale for such a residence would be. It is clear, however, that the house proposed here is much, much larger than that generally found on the north coast and that redesign and reduction in scale (LCP Policy 5.1.6) is warranted. The LCP provides some guidance in this respect, at least in terms of the area of site disturbance, dictating that development within or adjacent to the native Monterey pine forest be limited to a maximum of ¼ acre, or 10,890 square feet, of site disturbance (LCP Section 16.32.090(c)(C)(1)). This amount of site disturbance may be more than what is “reasonable.” For comparison, it should be noted that within the noted large home enclave of Pebble Beach, residential structures are limited to a 5,000 square foot footprint and are allowed a maximum additional hardscape of 4,000 square feet: a total of 9,000 square feet of impervious surface coverage. Here the entire site is ESHA and roughly 11,000 square feet is allowed. In Pebble Beach, applicants start with 9,000 square feet; that amount may be reduced to address on-site ESHA concerns.

In any case, an approvable project must also be otherwise consistent with the sensitive habitat policies, must completely mitigate all adverse habitat impacts, and must be deemed the least environmentally damaging alternative (LCP Policies 5.1.3, 5.1.6, 5.1.7 and Zoning Section 16.32.090(b)(1)). The Project must be placed as far away from habitat as possible, must prohibit domestic animals, must limit removal of native materials, and must prohibit landscaping with exotics (LCP Policy 5.1.7). An approvable project must also provide for a deed restriction and/or an open space or conservation easement over the portion of the site left undisturbed by the approvable project (LCP Policy 5.1.7 and Zoning Section 16.32.090(b)(2)).

³² LUP Chapter 1, Interpretation.



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Because Zoning Section 16.32.090(c)(A)(1) does not allow for a residential use within essential habitat; and because any residence at this location would have to be located within ESHA deemed by the LCP essential habitat, a variance would be required to allow for a residence here. Because of takings considerations, the Commission finds that a variance is appropriate in this instance to allow a residential use in essential habitat because: (1) the underlying CA zone district allows conditional residential use; (2) because the entire property is essential habitat, strict application of 16.32.090(c)(A)(1) would deprive the property of the same type of residential use enjoyed by other similarly CA-zoned property in the vicinity; (3) as conditioned herein, the variance would be otherwise compatible with the intent and purpose of the ESHA policies and would not be detrimental to the public or adjacent properties; and (4) would not be a special privilege inconsistent with the current limitations placed on property in the CA zone and the immediate vicinity in which residential uses are a conditional use.³³

All ESHA impacts (i.e., loss of Monterey pine forest habitat to be occupied by a house, the loss of garter snake and frog habitat to be occupied by a driveway, and the significant disruption to said habitats from the project's additional traffic and the range of typical residential activities on the subject property) must be mitigated for LCP consistency. An appropriate means to mitigate for project impacts is to enhance the affected habitats, particularly the road crossing directly adjacent to the pond where the most sensitive of snake and frog habitat is located and, thus, where the largest potential for negative impacts to these listed species could occur.

Another critical finding for allowing development within ESHA is the LCP Policy 5.1.3 requirement that the project must “serve a specific purpose beneficial to the public.” There are several ways in which this can be accomplished with this property. The most apparent is to read 5.1.3 in tandem both with the necessary mitigations and with the deed restriction and/or an open space or conservation easement requirement, and ensure that the remainder of the site is protected in the favor of the people of the State of California for its habitat values to promote the public's interest in preserving sensitive species habitat.

And finally, because of the formal Federal and State list status for San Francisco garter snake and California red-legged frog, USFWS and CDFG will need to be consulted. Since it is unlikely that ‘take’ of listed species can be altogether avoided should any residential development occur here, it is likely that a Habitat Conservation Plan will be required by USFWS before construction could commence at this site.³⁴ CDFG indicates that the Department would either input directly into a HCP process or, if a HCP was not required for any reason, would require their own permit through a formal Biological Opinion to address

³³ As such, the Commission finds that, as conditioned: (1) that because of special circumstances applicable to the property, including size, shape, topography, location, and surrounding existing structures, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification; (2) that the granting of such variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety or welfare or injurious to property or improvements in the vicinity; and (3) that the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated. (Reference: LCP Section 13.10.230(c), findings required for a variance approval.)

³⁴ USFWS could not conclude with certainty whether a HCP would be necessary for this project before the parameters of the project are established by a Commission action. Absent a firm description of the project based on a Commission approval, USFWS was hesitant to make a prediction on the HCP requirement here. However, based on the extent of resources at the subject site, and the importance of the larger Año Nuevo habitat area to the survival, ultimately, of the San Francisco garter snake, Commission staff conversations with USFWS staff indicate that an HCP requirement is highly likely.



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appropriate mitigations and measures to ensure long term habitat protection in this case.³⁵ In other words, whether or not an HCP is required, an approvable project in any case must include verification of USFWS and CDFG review and approval.

B. LCP Visual parameters

The project must be kept permanently outside of the public viewshed. To the extent that a modified project can be kept completely outside of the public viewshed, questions of design and immediate neighborhood compatibility are lesser concerns here; the public would not be viewing this structure located on inland private roads. Rather, the immediate handful of neighbors would be those for which this compatibility question would mostly be reserved. In this case, each of the surrounding neighbors have submitted letters of support for the design proposed by the Applicant (see Exhibit M).

C. LCP Agriculture parameters

The residential compound proposed must be reduced in scale to more closely approximate the range of size and scale for north coast agricultural dwellings. The LCP-required “hold-harmless” language (LCP Section 16.50.090) must be accounted for because the site is surrounded on three sides by agriculturally-zoned properties. Were there not to be ESHA constraints, the subject agricultural use of the property, and the way in which the residence would support that use, would need to be more clearly defined. In this case, however, although agriculture is a high priority under the LCP (and the Coastal Act), given the sensitive ESHA resources at this location, avoidance and preservation of ESHA at this site, at the expense of agriculture, is more protective of coastal resources given both the absence of ongoing agriculture and the significant endangered species habitat present on the site as well as the site habitat’s relation to the larger endangered species habitat of the greater Año Nuevo area.

D. LCP Helicopter Use parameters

Commuter helicopter use must be prohibited to protect ESHA from disruption both from noise and vibration as well as direct mortality from landing and parking within sensitive habitat (LCP Policies 5.1.3, 5.1.6 and 5.1.7, IP Section 16.32.090(c)(A)(1)). Commuter helicopter use must also be prohibited because it is inconsistent with maintaining the character of the surrounding north coast area – particularly as it affects ongoing programs at Año Nuevo State Reserve and Big Basin Redwoods State Park (IP Sections 13.20.130(b)(1) and 13.20.130(c)(2)). Finally, the helicopter use must be prohibited because the envisioned commuter use is not a category of helicopter use (i.e., emergency services or agricultural) that is allowed in the County (Policy 3.19.1).

2. Potential Residential Siting Options

Unfortunately, in light of the significant constraints present to varying degrees over the subject property, the best choice for siting a residential is not obvious. Each potential location has environmental costs and benefits that must be weighed. For residential siting in light of agricultural issues, the best place for a residence would be located outside of the most agriculturally viable portions of the currently fallow

³⁵ Pursuant to Section 2080 and Section 2081 of the Fish and Game Code.



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property. The most viable agricultural lands are located in the less steep portions of the site, thus dictating a residential site on the relatively steeper portions of the site. These steeper portions of the site are almost entirely occupied by native Monterey pine forest deemed ESHA by the LCP. To avoid Monterey pine forest and forest management issues, a site outside of the forest is preferred. All such non-forested potential sites are the most agriculturally viable and provide habitat and migration corridors for San Francisco garter snake and red-legged frog. If endangered species habitat is given a greater relative priority than either agriculture or the native pine forest habitat here, then a location outside of this endangered species habitat is preferred. Such a distinction then redirects siting back to the steeper portions of the site (i.e., in the ESHA-designated forest). The steeper forested portions of the site require an access driveway that must traverse frog and snake habitat and migration corridors. The steeper portions of the site are also those that are the most visible in the critical viewshed.

Because of the competing resource constraints, the siting challenge is to find the portion of the site that will best avoid ESHA. Staff has identified three basic siting areas that meet this criteria in different ways:

- (1) The northwest corner of the site adjacent to the existing road. This area would avoid the forested portions of the site, would avoid any roadwork within the wetland/riparian area, would avoid additional traffic on the existing road through the wetland/riparian area, would avoid an interior driveway on habitat and avoid bisecting any habitat corridors, and would be hidden from view from public viewing areas to the west by the existing eucalyptus grove on the adjacent property. This portion of the site would be approximately 900 feet from the wetland/riparian system that is the most critical frog and snake habitat area on the property. This site, however, would be located within an upland area considered San Francisco garter snake habitat.
- (2) The southwest corner of the site next to the existing residence on the adjacent property. This area would avoid the forested portions of the site, would avoid an interior driveway on habitat and avoid bisecting any habitat corridors, would be hidden from view from public viewing areas to the west by the woody riparian corridor, and would cluster residential development nearest to that which exists on the adjacent property so as to limit residential activities and issues (for example, fire safety and management) to one portion of the overall area. However, this site would involve roadwork within the wetland/riparian area, would increase traffic on the existing road through the wetland/riparian area, would bring the residential use within approximately 300 feet of the wetland/riparian system, and would bring the residential use closer to the riparian corridor that serves as a migration corridor for San Francisco garter snake.
- (3) The Monterey pine forest area as proposed by the Applicant. This area would avoid the garter snake and frog habitat present at lower elevations. However, this area would place the residential use within the native pine forest, would involve roadwork within the wetland/riparian area, would increase traffic on the existing road through the wetland/riparian area, would include an interior driveway on habitat and would bisect a potential red-legged frog migration corridor, and would be partially visible from public viewing areas to the west.

See page 8 of Exhibit H for alternative site locations.



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After consultation with USFWS and CDFG, Commission staff believes that if a residence must be considered in deference to constitutional rights of private property owners, the best location to pursue residential development on the subject site is within the forested site area proposed by the Applicant. All things considered, this area would have the least impact on the listed Threatened and Endangered species frog and snake habitat. Although the site is located within the native pine forest, placing a residence here will limit residential activities associated with the house to an area that is not frog or snake habitat. The residence would not require any native pine removal as it would be tucked within a forest clearing at the edge of the larger pine-forested area inland. As such, its impact on the native Año Nuevo Monterey pine stand could be minimized.

3. Project Modifications

Even with the forest site location, the proposed residence at this location would result in a slew of adverse impacts that must be avoided and/or mitigated including the loss of forest habitat for the house placement, the loss of garter snake and frog habitat because of the driveway placement, the potential for increased mortality to frogs and snakes from increased use of the existing road and new use of the driveway, the potential for disturbance to frogs and snakes from typical residential activities on the site, impacts to sensitive species during construction, and development within the public viewshed.

To address these impacts, the following project modifications are necessary (note: see also Exhibit G for additional project approval notes on the site plan):

A. Residential Structure

The area of site disturbance must be reduced to the $\frac{1}{4}$ acre maximum allowed by the LCP (see Special Condition 1). This will help address multiple issues simultaneously because it will reduce area of pine forest habitat removed for the residence by approximately $\frac{3}{4}$ of an acre, it will reduce the scale of the residential compound to that more nearly approximating an agricultural residence, and it will reduce the potential for native pine forest habitat conversion in the future in the event of fire suppression requirements. In fact, in terms of fire safety requirements for the site, CDF required a defensible space of 60 feet to the uphill side of the residence and 30 feet to the downhill side. Within this area, trees could remain, but fire ladders, including lower lying limbs, would need to be removed. From the Applicant's plans, it is not clear to what extent such a requirement would have necessitated native pine removal. The $\frac{1}{4}$ acre limitation will avoid this issue in that the forest area clearing is large enough to allow for a $\frac{1}{4}$ acre site disturbance and a CDF-required defensible space. This approval is conditioned for CDF review (see Special Conditions 1 and 7).

The height of the structure must be reduced by a minimum of 10 feet to ensure that it is not visible from public viewing locations within Año Nuevo State Reserve. Commission staff estimates that this is the amount of the structure that would be visible within the critical public viewshed. The Applicant will need to provide evidence that the residence would be invisible from all public viewing locations within Año Nuevo State Reserve and/or Highway One. In the event the residence would be visible from the public viewshed in its new location as determined by the Executive Director (upon review of the Applicant's revised plans and/or any necessary and appropriate visual simulations prior to the issuance of the CDP),



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that visible portion of the structure shall be removed from the proposal. In other words, the Applicant will need to make whatever additional adjustments necessary to the proposed house design (such as reduced square footage, etc.) to ensure that it will not be publicly visible. See Special Conditions 1 and 5. In the event that the subject residence ever becomes visible from Año Nuevo State Reserve and/or Highway One, the Applicant shall screen and/or remove that portion of the structure visible. See Special Conditions 1 and 5.

Runoff from the area of site disturbance, particularly from those areas subject to vehicular use, must be appropriately filtered prior to discharge. See Special Condition 1.

B. Driveway and Road Improvements

The new driveway from the existing roadway to the house site must be placed as far away from the Applicant's pond as possible using the existing informal jeep trail adjacent to the southern property line (see Exhibit G) to avoid the main pond habitat area as much as is feasible. The driveway must not be paved as such pavement will attract California red-legged frog and San Francisco garter snake to the driveway area. The driveway shall be minimized in length and width to avoid unnecessary habitat conversion; the driveway shall be no wider than 12 feet. See Special Condition 1.

Such a driveway would still be placed in an area deemed ESHA. Staff considered the requirement of a bridge style, or causeway, driveway. However, after consultation with USFWS and CDFG, Staff believe that that a driveway causeway would not be the most prudent mitigation for impacts to the listed species. Instead, again after consultation with USFWS and CDFG, Staff believes that the listed species are better served by installing a bridge at the pond area; the most sensitive of the habitat areas on site. Thus, the road area at the pond shall be replaced with a bridge of adequate span to provide for sensitive habitat connectivity (i.e., San Francisco garter snake and California red-legged frog migration between the pond and the riparian corridor to the southwest) and flood protection (see also below). The pond area roadbed fill shall be replaced with an engineered system designed to manage pond hydrology in favor of San Francisco garter snake and California red-legged frog. The area of removed roadbed fill and surrounding disturbed areas must be restored, and the bridge and adjacent roadway areas shall incorporate adequate measures to capture, direct, and treat road runoff to avoid sediment and pollutant loading. The bridge must be the first element of the project constructed so that construction vehicles travelling through this area do not adversely and disproportionately affect wildlife migration. See Special Conditions 1, 2 and 3.

The bridge at the pond seems the most reasonable mitigation for the site. On balance, frogs and snakes would be the least disrupted because they would be able to migrate over the driveway, while not being attracted to it, and would be able to migrate in the primary migratory corridor under the bridge and thus, be the least disrupted by the additional traffic in this area. Because of this, it seems reasonable to not count the unpaved driveway area against the ¼ acre site disturbance maximum.

In any case, the existing access road shall not be expanded outside of its existing roadbed prism to avoid any additional habitat loss. To avoid killing snakes and frogs drawn to the retained heat of pavement, no paving of the access road is allowed. See Special Condition 1.



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C. Habitat Preservation and Enhancement

All areas outside of the ¼ acre site disturbance area, the driveway, and the existing road, shall be placed under a conservation easement in favor of the people of the State of California.³⁶ The property shall be deed restricted to disallow non-restoration/enhancement development activities of any kind in the easement area. The easement area shall be for the purpose of preserving Monterey pine forest habitat, San Francisco garter snake habitat, and California red-legged frog habitat. The restrictions must make it clear that prescribed burns within the larger Monterey pine forest (i.e., extending off-site) may be undertaken at some point in the future. See Special Condition 5.

To mitigate for the loss of Monterey pine forest habitat to be occupied by a house, the loss of garter snake and frog habitat to be occupied by a driveway, and the significant disruption to said habitats from the project's additional traffic and the range of typical residential activities on the subject property, the Applicant will be required to enhance the easement area habitats and replace the road at the pond with a bridge. Any areas of road disturbance nearest the pond (to install the bridge in this area) shall be restored for habitat purposes. See Special Condition 3.

All site landscaping must be with appropriate native species, and domestic animals are not allowed. See Special Condition 1.

To protect San Francisco garter snake and California red-legged frog during construction, construction shall be limited to the time when frogs and snakes are expected to be the least active and/or not present. For California red-legged frog this is roughly the dry season (from April 15th to October 15th). San Francisco garter snake are not expected to have any significant upland movements between April 15th and July 1st. Special precautions will be necessary to survey for frog and snake presence and to relocate any individuals found. In any case, a qualified biological monitor experienced with these species shall be present at the site during all construction activities; the biological monitor shall have the authority to halt all construction activities, and/or modify construction methods, as necessary to protect habitat and individual sensitive species. All construction areas shall be delineated with fencing and kept to the absolute minimum necessary (i.e., to construct the bridge, the driveway, and the residence) to minimize disturbance of habitat for frog and snake. To the extent feasible, previously disturbed off-site areas shall be used for storage and staging of equipment and materials to minimize the habitat area disruption on the subject site. See Special Condition 2.

Finally, it is only because of this habitat preservation and enhancement, and the conservation easement, that it can be found that the project, as conditioned, includes a “purpose beneficial to the public” as required by the LCP (LCP Policy 5.1.3) to allow development within ESHA when there are constitutional takings considerations.

D. Tree Screening

The existing eucalyptus grove provides a dense visual screen of the subject site from Highway One and

³⁶ Technically, an offer to dedicate a conservation easement given that there is not currently an appropriate preservation organization that has been identified to hold any such easement here.



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portions of Año Nuevo State Reserve seaward of the Highway. However, eucalyptus is a highly flammable tree that would be very susceptible in the event of a forest fire in the area. Eucalyptus may also be removed at some time to enhance native habitat values. The proposed Monterey cypress row represents a sort of insurance for such potential loss of the eucalyptus grove. However, the Applicant proposes to plant the cypress in 15 gallon containers along a straight line. If portions of the row were planted instead in the 48 inch box size, better immediate screening would be provided (16' to 18' at planting), and these trees would be expected to reach mature heights faster than the 15 gallon size. In addition, Commission experience has been that uneven stands (planting differing ages/sizes of tree) present a better chance for overall success than do mono-age/size stands. Likewise, younger cypress (say in 5 gallon containers) often outperform those transplanted from larger sizes as they are able adapt to the surrounding conditions easier. The best chance for a dense row of Monterey cypress to be successful at this location would be to plant two rows of trees to approximate an uneven stand. The larger trees (48 inch box and 15 gallon container) would be planted nearest the road, and the smaller trees would be planted inland of the larger trees so as to avoid being shaded out by the larger row. See Special Condition 1.

The Applicant's forester/landscaper recommends using 48 inch box specimens for the 22 Monterey cypress, Coast live oak, and Coast redwood to be planted nearest the residence to better achieve immediate screening of the residential compound.³⁷ Accordingly, all 22 tree specimens in the vicinity of the residential compound shall be of the 48 inch box variety. See Special Condition 1.

All trees on the site, both existing and those to be planted, shall be retained in perpetuity to ensure adequate screening between approved structures and public viewing areas, and to retain the forested backdrop here. See Special Condition 5.

E. Agriculture

The Applicant must record an agricultural hold-harmless deed restriction to help avoid conflicts between the subject residential use and any adjacent agricultural activities. Special Condition 6.

F. Helicopter Use

No helicopter use will be allowed at this location. Special Condition 5.

G. Construction

Construction on the site shall take place between April 15th and October 15th only to best avoid impacts to listed species. All trees to be retained on the site shall be protected during construction. Erosion control BMPs are required. See Special Condition 2.

H. Other Agencies Review and Approval

All required project modifications and plans must be submitted with evidence of the review and approval by USFWS, CDFG, CDF, and Santa Cruz County. See Special Condition 7. All previous conditions of approval imposed on the project by the Santa Cruz County pursuant to an authority other than the Coastal

³⁷ Ibid. Staub and McGuirk, May 2000.



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Act would remain in effect, except for those that would conflict with the Coastal Commission's conditions for this approval. See Special Condition 8.

4. Approvable Project Conclusion

By modifying the project in these ways, the Commission can find that the project is the least environmentally damaging alternative in light of the legal requirement to ensure a reasonable economic use consistent with constitutional takings law, that adverse habitat impacts are appropriately mitigated, and that the approved project serves a specific purpose beneficial to the public; all findings required under the LCP. The approved project will allow a smaller residential use more in scale with the surrounding north coast agricultural landscape of which it is a part, and outside of the critical public viewshed.

As such, and only as conditioned in this approval, the Commission can approve the modified project and finds it consistent to the greatest extent feasible with the certified Santa Cruz County LCP.

G. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County certified a negative declaration for the proposed project when it was approved by the Board of Supervisors on March 14, 2000.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission's findings above (incorporated herein by reference) have documented that the proposed project would lead to significant adverse effects to ESHA, visual resources, and agriculture; all of these effects are exacerbated by their potential for cumulative impacts in the reasonably foreseeable future. In light of these significant adverse effects, many of which were not adequately identified nor mitigated by the County's CEQA document, the "no project" alternative would be the environmentally superior alternative within the meaning of CEQA. Such an alternative would avoid adverse ESHA, visual, agricultural, and cumulative effects to the greatest degree feasible.

However, in light of constitutional takings considerations, a "reasonable economic use" must be allowed for this site. In this case, the Commission recognizes the fact that the Applicant is proposing a residential use for purposes of living on the property. Although limiting use of the property to habitat enhancement and protection would be an environmentally superior alternative, such use is contrary to the basic project



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objective and would not likely allow for a reasonable economic use.³⁸ As such, in this case, and only as conditioned herein, the second environmentally superior alternative within the meaning of CEQA is to allow for a reduced scale project that will: minimize site disturbance to that allowed by the LCP in the native forest (i.e., ¼ acre); will lower the height of the proposed residence to ensure that it is not visible within the existing public viewshed; will require additional dense tree planting to ensure that the residence is not visible in the event the existing vegetative screen is removed in the future; will place the remainder of the site area (outside of the residence itself) under a permanent conservation easement; will enhance garter snake and frog habitat within the conservation easement area; will protect sensitive species during construction; and will require snake- and frog-friendly roads so as to least disrupt the natural movements of these species.

Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as so modified by this conditioned approval does the approved project incorporate all of feasible design alternatives and feasible mitigation measures available in this case to substantially lessen its significant adverse effects on the environment. Therefore, the project, as conditioned, is approvable under CEQA.

³⁸

In certain circumstances habitat protection and enhancement may be a reasonable economic use of a sensitive property if conducted in such a way as to produce income from public or private visitation or otherwise provide a reasonable economic return to a property owner.

